

THE  
PROMOTION AND ACCOUNTS  
OF A  
PUBLIC LIMITED COMPANY

BY  
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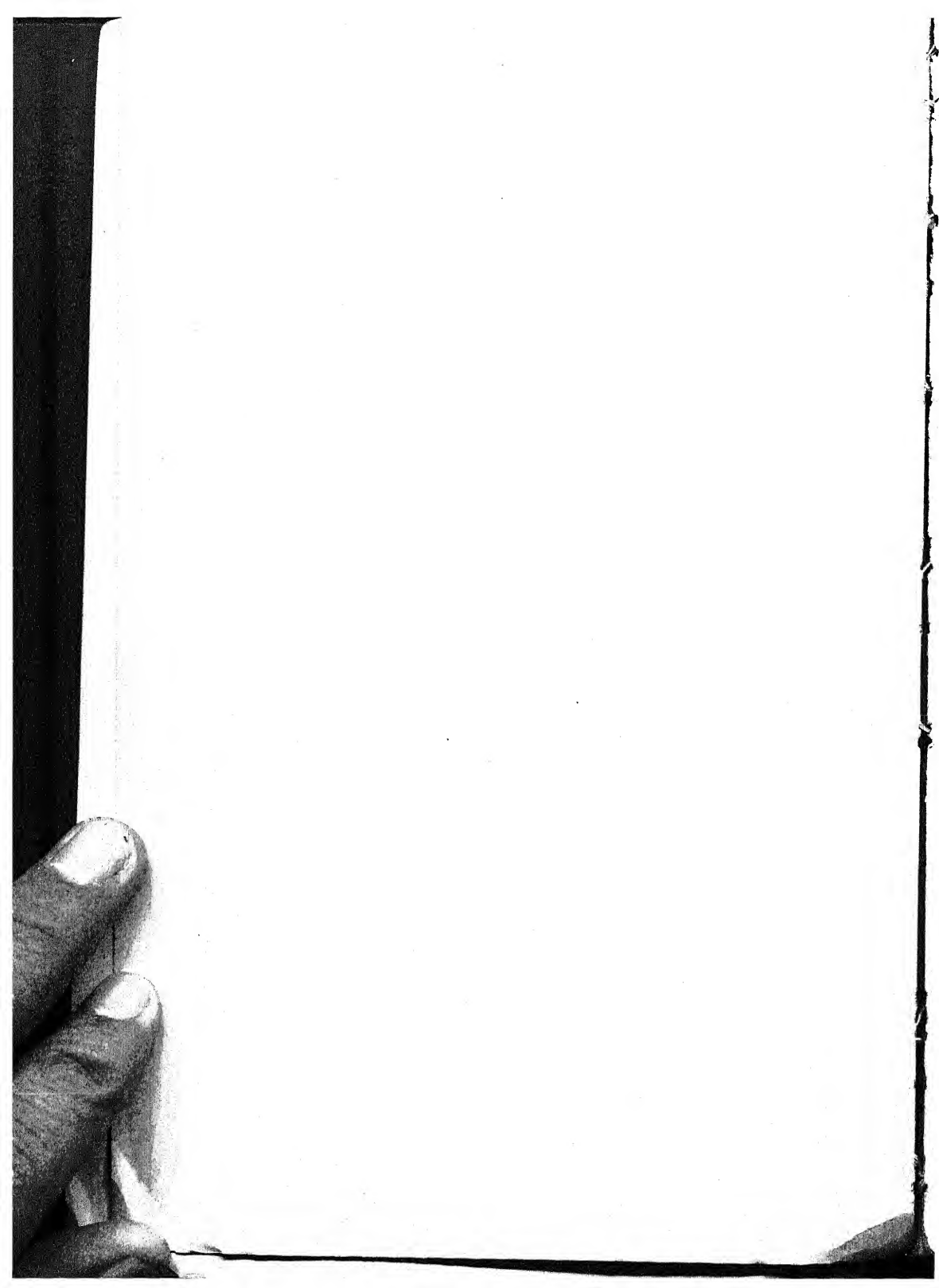
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## INTRODUCTION.

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THIS little work is not intended as a text-book on the Companies Act, its object being to deal, from the practical standpoint, with the procedure necessary on the formation of a public limited company, recognising, as always should be the case, that legal aid will be evoked on points of law.

Numerous books of reference are available for both the student and practitioner on *Company Law*, but the application of such law in everyday practice, which falls to the lot of those who are intimately connected with the formation of public limited companies, has been somewhat neglected by writers on the subject, and it is this want which the work attempts to supply.

Based on a lecture read before certain Chartered Accountant Student Societies, it is particularly intended for accountants and secretaries of companies, and as a handy book of reference for clerks in the accountancy profession.

My thanks are due to my brother, Mr. H. Edgar Jenkinson, A.C.A., for the assistance which he has given me in compiling the index, and generally preparing the book for the press.

M. WEBSTER JENKINSON.

BROAD STREET AVENUE,  
LONDON, E.C.

*September 1912.*



# THE PROMOTION AND ACCOUNTS OF A PUBLIC LIMITED COMPANY.

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## CHAPTER I.

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### CLASSIFICATION OF LIMITED COMPANIES AND PRIVATE COMPANIES—PROCEDURE TO FORM PUBLIC LIMITED COMPANY.

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#### **Classification.**

Companies incorporated under the Companies (Consolidation) Act, 1908, may be classified as follows:—

- (1) *Companies limited by shares*, the liability of each member being limited to the amount, if any, unpaid on the shares held.
- (2) *Companies limited by guarantee*, the liability of each member being limited to the amount agreed to be contributed in the event of winding-up.
- (3) *Unlimited companies* not having any limit on the liability of the members.

It is only intended to deal in this work with "Companies limited by shares," and only with those which are known as "public companies," a "private company" \* being one which by its Articles

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\* *Vide* "The Promotion and Accounts of a Private Limited Company," by same author.

- (a) restricts the right to transfer its shares; and
- (b) limits the number of its members (exclusive of persons who are in the employment of the company) to fifty; and
- (c) prohibits any invitation to the public to subscribe for any shares or debentures of the company.

#### **Procedure.**

The procedure to be followed on the formation of a public limited company is as follows :—

- (1) Prepare statement showing details of proposal, including suggested name, situation and description, proposed capital, purchase-price, working capital required, list of documents available, &c., and consider same with promoters.
- (2) After deciding upon the amount of capitalisation discuss how such capital is to be raised, *i.e.*, whether by issue of debentures, preference shares, or how otherwise, and whether the purchase-price is to be satisfied wholly in shares or part in cash and part in shares. Settle the qualification and remuneration of directors, and take steps to constitute board.
- (3) Ascertain from the Registrar of Joint Stock Companies if there is any objection to the proposed name of the company.
- (4) Prepare draft prospectus and have same passed by solicitors.

- (5) If it is decided to have the issue underwritten proceed to obtain underwriters. Have underwriting letter drawn up by solicitors. (*Many proposed companies never get past this stage*). On obtaining underwriting letters duly signed accept same forthwith, making inquiries to ascertain if "good."
- (6) Have memorandum and articles prepared by solicitors, and register the company, a meeting of the board being immediately convened to approve prospectus, &c.
- (7) Make necessary arrangements for issue, including printing of prospectus, advertising, and addressing; and obtain Seal for company, and Allotment Sheets, Allotment Letters, and Letters of Regret.
- (8) File with Registrar of Joint Stock Companies copy of prospectus and consent of directors to act, &c., and make issue.
- (9) Hold board meeting to allot shares and send out Letters of Allotment and Regret.
- (10) Prepare necessary returns for Registrar and obtain Certificate to commence business, write up Share Ledger, Registers, and others books; issue share certificates; prepare statutory report and hold statutory meeting.

## CHAPTER II.

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### CONSTITUTION AND MEMORANDUM OF ASSOCIATION— ARTICLES OF ASSOCIATION—USE OF NAME—INSPECTION OF MEMORANDUM AND ARTICLES.

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#### **Constitution and Memorandum of Association.**

A public limited company consists of seven or more persons, who have complied with certain registration requirements of the Companies (Consolidation) Act, 1908, and who have been granted by the Registrar of Joint Stock Companies a certificate of incorporation which constitutes a new body, which is a distinct legal entity from the members who subscribe for shares therein.

If at any time the number of members is reduced below seven, and the company carries on business for more than six months whilst the number is so reduced, every person who is a member after that time, and is cognisant of the fact, is severally liable for the payment of the whole of the debts of the company contracted during such period.

The fundamental principles of its constitution are contained in the *Memorandum of Association*, which must state :—

- (1) The name of the company, with " Limited " as the last word in its name.

- (2) The part of the United Kingdom, whether England, Ireland, or Scotland, where the registered office is situated.
- (3) The objects of the company.
- (4) A declaration that the liability of members is limited.
- (5) The amount of share capital and the number of shares into which it is divided.

*Alteration of Memorandum of Association.*

The memorandum of association contains the fundamental conditions upon which the company is formed, and these may only be varied in a manner prescribed by the Act, namely :—

1. (Section 8.)—To change the name of the company.
2. (Section 9.)—To alter its objects.
3. (Section (41).)—To alter its capital by (a) increasing its share capital; (b) consolidating and dividing its capital into shares of a larger amount; (c) converting all its paid-up shares into stock or *vice versa*; (d) sub-dividing its shares into shares of smaller amount; (e) cancelling shares unissued.
4. (Section 45.)—To reorganise its share capital.
5. (Section 46 (1).)—To reduce its share capital, either by—
  - (a) Extinguishing or reducing the liability on any shares not fully paid-up.

- (b) Cancelling paid-up share capital which has been lost or is unrepresented by available assets.
  - (c) Repaying any paid-up share capital in excess of the requirements of the company.
6. (Section 59.)—To provide that any portion of the share capital not called up shall only be called in the event of the company going into liquidation.
  7. (Section 61.)—To make the liability of the directors unlimited.

#### Articles of Association.

The articles of association are the internal regulations which relate to the management of the company, and must by Section 12—

- (a) Be printed.
- (b) Be divided into paragraphs numbered consecutively.
- (c) Be stamped with a 10s. deed stamp.
- (d) Be signed by each subscriber of the memorandum of association in the presence of at least one witness, who must attest the signature.

If articles are not registered the regulations contained in Table A—a model set of articles set forth in the First Schedule of the Companies (Consolidation) Act, 1908—apply, but in practice it is generally more expedient to have a special set of articles peculiarly adapted to the particular needs of the case. Private companies often adopt Table A in part, but this is not desirable in the case of a public company.



The clauses included in Articles of Association deal *inter alia* with the following points :—

- (1) Definitions.
- (2) Preliminary Contract.
- (3) Capital and Shares.
- (4) Minimum Subscription.
- (5) Underwriting Commission.
- (6) Share Certificates.
- (7) Calls.
- (8) Forfeiture and Lien.
- (9) Transfer and Transmission of Shares.
- (10) Share Warrants.
- (11) Conversion of Shares into Stock.
- (12) Increase and Reduction of Capital.
- (13) Borrowing Powers.
- (14) General Meetings.
- (15) Proceedings at General Meetings.
- (16) Votes of Members.
- (17) Directors' Powers, Remuneration, and Qualification.
- (18) Managing Director.
- (19) Disqualification of Directors.
- (20) Rotation of Directors.
- (21) Proceedings of Directors.
- (22) Seal.
- (23) Dividends and Reserve Funds.
- (24) Accounts and Audit.
- (25) Rights of Members *inter se*.
- (26) Notices.
- (27) Winding up.

A company may from time to time by special resolution alter its articles as the members may think fit,

provided such alteration is not outside the powers of the company as defined by the memorandum or prescribed by statute.

Thus articles cannot sanction the payment of dividends out of capital, or give permission for a company to purchase its own shares, or to issue shares at a discount.

The articles constitute a contract not merely between the company and the members, but also between each individual member and every other member. (*Eley v. Positive Assurance Co.* (1876, 1 Ex.D., 20, 88.)

A contract contained in the articles cannot, however, be enforced by a person who is not a member (*Rotherham Chemical Co.* (1884), 25 Ch.D. 103), or even by a member, except in so far as it relates to his position as a member. (*Browne v. La Trinidad* (1888), 37 Ch.D. 1.)

The articles may be altered so as to be retrospective in effect. (*Allen v. Gold Reefs, Lim.* (1900), 1 Ch. 656.) provided such alteration will not occasion the breach of some contract entered into by the company.

#### *Name.*

Unless the company has obtained a special licence from the Board of Trade under Section 20 of the Act, the word "Limited" must always be added to the name of the company, and must not be used in a contracted form.

It should also be noted that the special permission of the Board of Trade has to be obtained to use words like

"Imperial," "Royal," &c.; and that once the name of the company is registered, it can only be changed by the sanction of a special resolution of the company and the approval of the Board of Trade.

The name must not be identical with or nearly resemble that of any other company.

By Sections 19 and 20 of the Act, companies formed to promote art, science, &c., which do not intend to pay dividends, may, with the sanction of the Board of Trade, dispense with the use of the word "Limited."

The name of a company must not resemble that of any other existing company. Sometimes, when a company is in liquidation, it is desired to register another company with a similar name. Before the Registrar will give his sanction proof must be given that such company is actually in course of being wound up, and the consent of the liquidator must also be obtained.

The following shows the form of such letter of consent, which must be impressed with a five shilling fee stamp.

No. of Certificate \_\_\_\_\_

THE COMPANIES (CONSOLIDATION) ACT, 1908.

CONSENT TO TAKE THE NAME OF A SUBSISTING COMPANY.

*To the Registrar of Joint Stock Companies.*

(1) I or we. (1) the undersigned, being (2) \_\_\_\_\_  
 (2) "The Liquidator." of \_\_\_\_\_ Limited  
 or "two of the Directors." give you notice that this Company is in course of being  
 or "the whole of the Shareholders." dissolved, and hereby, under the Provisions of the Com-  
 or "duly authorised at a General Meeting held on the day of \_\_\_\_\_ panies (Consolidation) Act, 1908, Section 8, and on behalf of  
 the said Company, testify its consent to the registration of a  
 new Company by the name of \_\_\_\_\_  
 Limited.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_.

(Signed)

### Use of Name.

Immediately it becomes incorporated, the company must procure a seal, with its name engraven thereon in legible characters, and, by Section 63, must—

(1) Paint, affix, and keep painted or affixed, its name on the outside of every office or place in which its business is carried on, in a conspicuous position.

(2) Have its name mentioned in legible characters in all notices, advertisements, and other official publications of the company, and in all bills of exchange, promissory notes, endorsements, cheques, and orders for money or goods purporting to be signed by or on behalf of the company, and in all bills of parcels, invoices, receipts, and letters of credit of the company.

Directors who accept a bill of exchange on behalf of a company in which the name is not correctly given in every detail, will become personally liable on the bill, and in this connection it should be remembered that the word "*Limited*" should be used in full and "*Company*" not contracted, unless appearing as "*Co.*," in the memorandum of association.

From the decision in *F. Stacey & Co. (Limited) v. Wallis and others* (28 T. 209) it seems, however, that if the bill is properly *addressed* to the company it is not necessary for the name of the company to appear on the *acceptance*, and that in this connection the contraction "*Ltd.*" is good.

*Contracts.*

As regards contracts entered into by a company—

(1) Any contract which, if made between private persons, would be by law required to be in writing, and if made according to English law to be under seal, may be made on behalf of the company in writing under the common seal of the company.

(2) Any contract which, if made between private persons, would be by law required to be in writing, signed by the parties to be charged therewith (*e.g.*, contracts under Section 4 of Statute of Frauds, or Section 4 of Sale of Goods Act, 1893), may be made on behalf of the company in writing, signed by any person acting under its authority.

(3) Any contract which, if made between private persons, would by law be valid, although made by parol only, and not reduced to writing, may be made by parol on behalf of the company by any person acting under its authority, express or implied.

The company may by writing under seal empower any person to execute deeds on its behalf at any place not situate in the United Kingdom, and by Section 79 may, if authorised by its articles, have for use in such place a facsimile of the common seal of the company, with the addition on its face of the name of the place or district where it is to be used.

*Registered Office.*

By Section 62 every company is bound to have a registered office, and notice of the situation and of any

change therein must be given to the Registrar of Joint Stock Companies.

The memorandum must state whether the office is to be situate in England (including Wales), Scotland, or Ireland. It is not necessary to specify the exact address.

### *Objects.*

The "objects" clause sets forth the purposes for which the company is incorporated, the main purposes being stated under the first few headings, and the remainder devoted to a recital of the powers of the company, particularly as regards the various other businesses it can undertake.

Special care must be taken that the objects clause correctly describes the business of the company, as it is *ultra vires* for it to enter into any business outside the scope of its objects. The fact that the company has power to do other things will not allow it to make these subsidiary objects the main purpose of the company, in case the principal object has to be abandoned. For example, a company formed to acquire and work a rubber concession in the Straits Settlements, which also took power to acquire other rubber concessions, could not, without altering its memorandum, work a concession in Peru, if it were not found practicable to proceed with the first-named concession.

An act *ultra vires* the company is void even although the members assent thereto. (*Ashbury Railway Carriage Co. v. Riche* (1875) L.R. 7 H.L. 653).

If, however, an act is *intra vires* the company, but outside the powers of the directors, the shareholders can

ratify their action; and the articles of association may also be altered by special resolution where a matter is *ultra vires* the members but not the company.

By Section 9 of the Companies (Consolidation) Act, 1908, the "objects clause" may be altered by special resolution to enable the company—

- (1) To carry on its business more economically or efficiently; or
- (2) To attain its main objects by new or improved means; or
- (3) To enlarge or change the local area of its operations; or
- (4) To carry on some business which under existing circumstances may conveniently or advantageously be combined with the business of the company; or
- (5) To restrict or abandon any of the objects specified in the memorandum.

The alteration will not take effect until and except in so far as it is confirmed on petition by the Court, and before confirming the alteration the Court must be satisfied—

- (1) That sufficient notice has been given to every debenture-holder or other persons whose interests may be affected.
- (2) That, as regards any creditor who, in the opinion of the Court, is entitled to object and has objected to the alteration, either his consent has been obtained, or his claim discharged or secured.



The Court will also have regard to the rights and interests of the members of the company and of any class of them, and may give directions and make such orders as may be considered expedient for facilitating an arrangement for the purchase of the shares of dissentient members.

An office copy of the order and a printed copy of the memorandum must within fifteen days be sent for registration to the Registrar of Joint Stock Companies.

#### **Inspection of Memorandum and Articles.**

The memorandum and articles may be inspected at Somerset House by any person on payment of the prescribed fee (not exceeding one shilling) (Section 243).

Any person dealing with the company is therefore deemed to have notice of the contents of the memorandum and articles and of the powers of the company and its directors, but so long as any act done is not inconsistent with the memorandum and articles, an outsider dealing with the company is not bound to inquire whether all the steps have been taken which are prescribed thereby. That is to say, it is no part of the duty of an outsider to see that a company carries out its own regulations. (*Royal British Bank v. Turquand* (1856) 2 E. & B. 327.)

#### **Preparation of Memorandum.**

The preparation of the memorandum and articles of association should only be entrusted to solicitors who have had considerable experience in company work, and it is usual and desirable to have the documents finally settled by counsel.

## CHAPTER III.

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**Capital and Shares.**

The Memorandum of Association states the amount of share capital which the company is *authorised* to issue, but this authorised or nominal capital has no direct relationship to the *actual* capital of the company, except that the latter must not exceed the amount authorised. In practice it is always desirable to leave some margin, so that in the event of an extension of the business at some future date further capital may be issued without increasing the nominal capital authorised, although, as already explained, by Section 41 [1 (a)] this may be done by special resolution, if the articles so provide.

The capital of the company may be defined as follows :—

- (1) The Nominal (or authorised) Capital, being the amount set out in the memorandum of association as the capital of the company, and which is the amount the company is authorised to issue.
- (2) The Subscribed Capital, being the amount actually issued and allotted to subscribers.
- (3) The Paid-up Capital, being the amount paid or agreed to be paid on the shares issued.

The shares may be of different classes, viz. :—

- (1) *Ordinary*, which give no special privileges to holders as regards the sharing of profits or the distribution of assets in the event of winding-up.
- (2) *Preference*, which entitle the holders to certain preferential rights, either as regards dividends or in the distribution of assets in the event of winding-up.

Preference shares may be either cumulative or non-cumulative.

*Non-cumulative shares* only entitle the holders to a fixed rate of dividend out of the profits of any particular year, and if the profits for that year are not sufficient to pay the full rate of dividend they are not entitled to have the balance made good out of the profits of subsequent years.

*Cumulative shares* carry a fixed rate of dividend, but, if there are insufficient profits to pay that rate, holders are entitled to have the arrears made good out of the profits of subsequent years, before any dividends are paid on other classes of shares.

All preference shares are cumulative unless there are words implying the contrary in the articles.

- (3) *Deferred*, upon which no dividends are paid until a certain fixed dividend has been paid on both the preference and ordinary shares.

- (4) *Founders'* (usually issued as fully paid to vendors and limited in number), which generally entitle the holders to the whole or a proportion of the surplus profits, after payment of dividends at certain fixed rates on other classes of shares.
- (5) *Guaranteed*, dividends upon which are guaranteed for a term of years (usually by the vendors).

It is frequently the practice to issue what are termed "participating preference shares," which carry a fixed cumulative dividend, and provide that, after the payment of a certain rate of dividend on the ordinary shares, the preference and ordinary shares shall rank *pari passu* as regards any surplus profits which may still remain.

Prior to the Companies Act, 1907, if the rights of a certain class of members be fixed by the memorandum of association, such rights could not be altered (*Ashbury v. Watson* (1885) 30 Ch.D. 376), unless the memorandum itself provided for such variation (*Underwood v. London Music Hall* (1901) 2 Ch. 309).

But, by Section 45 of the Companies (Consolidation) Act, 1908, a company limited by shares may, by special resolution, confirmed by an order of the Court, modify the conditions contained in the memorandum, so as to reorganise its share capital, but no preference or privilege enjoyed by any class of shareholders can be interfered with without the sanction of the holders of such shares, a resolution passed by a majority in number holding three-fourths of such capital, and confirmed in the same way as a special resolution, being required.

A copy of the order must be filed with the Registrar of Joint Stock Companies within seven days.

In *Andrews v. Gas Meter Co.* (1897, 1 Ch. 361), it was also decided that a company having no power under its memorandum or articles as originally framed to create any preference between different classes of shares, could, unless the memorandum expressly provided equality, alter its articles so as to authorise the directors to issue preference shares.

*Return of Accumulated Profits in Reduction of Paid-up Capital.*

Section 40 of the Companies (Consolidation) Act, 1908, gives power to a company by special resolution to return to its members, in reduction of the paid-up capital of the company, the unpaid capital being correspondingly increased, any sum which might otherwise be distributed as dividend.

A memorandum showing the particulars required by the Act in the case of a reduction of capital has to be registered, but otherwise the usual requirements on the reduction of capital do not apply.

Any members who so desire may require the company to retain the moneys payable to them on account of future calls, the money being invested in authorised trustee securities and the income paid to such members.

The advantage of this section is chiefly in the case of a company which has accumulated a large reserve fund invested in the business, and which from some cause, as, for example, the sale of a fixed asset, finds itself with surplus cash not immediately required.

*Alteration of Capital.*

A company, if authorised by its articles in accordance with Section 41, may by special resolution—

- (1) Increase its share capital by the issue of new shares.

(Notice of the resolution sanctioning increase must, in accordance with Section 44, be given to the Registrar of Joint Stock Companies within fifteen days, and a statement of the increase stamped with an *ad valorem* duty of 5s. per cent. delivered.)

- (2) Consolidate and divide all or any of its share capital into shares of larger amount than its existing shares.

- (3) Convert paid-up shares into stock, or *vice versâ*.

(The distinctions between stock and shares are—

(a) Stock must be fully paid, whereas shares are frequently only partly paid.

(b) Stock may be issued or transferred in fractional parts, whereas shares cannot be divided below the nominal value of each share.)

- (4) Subdivide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum; so, however, that in the subdivision the proportion between the amount paid and the amount (if any) unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived.

(Many of the older companies divided their capital into shares of £100, £25, and £10 each. The present tendency is to favour shares of lower denomination, and to facilitate Stock Exchange transactions several of these companies have converted their shares into those of £1 each.)

- (5) Cancel unissued capital, diminishing the nominal capital accordingly.

Notice of any consolidation, conversion, or reconversion under this section must be given to the Registrar of Joint Stock Companies.

*Reduction of Capital.*

A company, if authorised by its articles, may reduce its capital in any way and, in particular, may by Section 46—

- (1) Extinguish or reduce the liability on any of its shares in respect of capital not paid up.
- (2) Cancel any paid-up share capital which is lost or unrepresented by available assets.
- (3) Pay off any paid-up share capital which is in excess of the wants of the company.

After the company has passed the necessary special resolution, application must be made by petition to the Court to confirm the reduction (Section 47).

If the proposed reduction involve any diminution of liability in respect of unpaid calls or the repayment to shareholders of paid-up capital, any creditor has by Section 49 the right to object to the reduction, and the Court has thereupon to settle a list of any creditors entitled to such right, and to fix a date within which objections are to be lodged. The company must then provide for the claims of any creditors who do not consent to the reduction; the amount being adjudicated upon by the Court, as in compulsory liquidation, in the event of any dispute as to amount.

As a condition of the sanction of the Court to the reduction of capital the company must, for such period

as may be fixed by the Court, add to its name the words "and reduced," although, if the reduction does not involve the diminution of liability in respect of unpaid share capital or the repayment of capital, this condition may be waived. In this latter case the words "and reduced" need not in any event be added until the presentation of the petition, otherwise, by Section 48, the addition dates from the confirmation of the special resolution.

The Court may also order the publication of the reasons for reduction. (Section 55.)

#### *Reserve Liability.*

After a company has been incorporated it may by special resolution determine that any portion of its share capital which has not been called up shall not be capable of being called up, except in the event of the liquidation of the company. (Section 59.)

When unpaid capital has been earmarked in this way the alteration becomes irrevocable, and such reserve capital cannot be included in any subsequent charge on the uncalled capital of the company.

#### *Application and Allotment of Shares.*

During the period that the Subscription List is open to the public the applications received will be obtained daily from the company's bankers, being numbered consecutively in red ink, the numbers corresponding to the items in the Bank Pass Book, which are numbered similarly.

The applications should then be sorted into alphabetical order and entered on to the allotment sheets, ruled as follows :—





Each application should be numbered in black ink, to correspond with the consecutive number on the allotment sheet, and, if possible, the same number used throughout for allotment letters and call notices, thus facilitating reference.

Before the meeting of the board to allot the shares, the lists must be agreed with the Bank Pass Books, and the totals entered at the foot of the various columns.

The allotment sheets should be signed and dated by the chairman of the board meeting at which the allotment is made. When the allotment is completed the application forms and allotment sheets should be bound up in book form for future reference.

The chairman and some of the directors will usually constitute themselves into a committee and decide on the allotment before the actual board meeting is held to formally allot the shares, thus facilitating the despatch of the allotment letters, which are ruled as follows :—

THE X. Y. Z. COMPANY, LIMITED.

ISSUE OF 300,000 SIX PER CENT. PARTICIPATING CUMULATIVE  
PREFERENCE SHARES OF £1 EACH.

Six-  
pence

No..... ALLOTMENT LETTER.

To..... LONDON, E.C.

SIR (OR MADAM),

In answer to your application for Shares in this Company, I beg to inform you that the Directors have allotted you.....Six. per cent. Participating Cumulative Preference Shares of £1 each.

The total amount payable thereon upon Application

and Allotment is 10/- per share ... .. £ : :

You have paid on Application ... .. £ : :

Leaving still to be paid by you ... .. £ : :

which sum is now due and must be paid forthwith to the Company's Bankers, The Trafalgar Square Bank, who will give you the appended receipt.

I am, Sir (or Madam),

Yours faithfully,

A. TICKEM, *Secretary.*

THE X. Y. Z. COMPANY, LIMITED.

BANKERS' RECEIPT.

ALLOTMENT.

Received the.....day of....., 1912, from M.....  
for the credit of this Company the sum of £ : :

For THE TRAFALGAR SQUARE BANK,

£ : :

Cashier.

THE X. Y. Z. COMPANY, LIMITED.

To be retained by the Bankers.

ALLOTMENT.

Please Receive to the credit of the X. Y. Z. Company, Limited, the sum of £ : : due from M..... on Allotment Letter No.....

£ : :

.....1912.

N.B.—This Allotment Letter must be presented entire on payment of the amount to The Trafalgar Square Bank.

The allotment letters must be stamped with a penny stamp if the amount of the shares or debentures allotted is under £5, otherwise with a 6d. stamp. These stamps must be impressed, so it is very necessary that the allotment letters are prepared some days before the issue, as otherwise delay is bound to ensue. As it is impossible to gauge the number required, it is advisable to have more than the estimated number required stamped, as the stamps on unused forms can always be reclaimed subsequently.

Letters of Regret should also have been prepared, in case the issue is over-subscribed, of which the following is a form :—

## THE A. B. C. RUBBER ESTATES, LIMITED.

No.....

1 D. STREET,

LONDON, E.C.

10th June 1912.

SIR OR MADAM,

I am instructed by the Directors to express their regret that they are unable to allot you any of the above Shares. Annexed is cheque for the return of your deposit, to which must be attached the Banker's Receipt for the sum paid on application.

Yours faithfully,

A. SCRIBE,

Secretary.

To .....

## THE A. B. C. RUBBER ESTATES, LIMITED.

No.....

£

LONDON, 10th June 1912.

To Messrs. THE DOGGER BANK, LIMITED.

PAY

or ORDER

Penny  
Stamp

the sum of

Pounds

Shillings

deposit receipt being attached

£ : :

Director.

Auditors.

Signature of Payee

The banker's receipt held by the applicant for the amount paid on application should be attached to the cheque before the bank will refund the amount paid.

An application for shares can be withdrawn any time before acceptance by the directors, the contract being complete as soon as the allotment letter is posted. For this reason it is very necessary that the clerk who posts the allotment letters should at the time certify on the allotment sheets the time and place of posting, and if, as generally is the case, the letters are posted in batches, the distinctive numbers of the letters contained in each batch.

If the allotment letter alter in any way the terms contained in the application form, or in the prospectus upon the basis of which the application is made, there is no contract, and the applicant can repudiate the shares.

Whenever a company limited by shares makes any allotment of its shares, the company must within one month of each allotment file with the Registrar of Companies—

- (a) a return of the allotments, stating the number and nominal amount of the shares comprised in the allotment, the names, addresses, and descriptions of the allottees, and the amount (if any) paid or due and payable on each share; and
- (b) in the case of shares allotted as fully or partly paid up otherwise than in cash, a contract in writing constituting the title of the allottee to the allotment together with any contract of sale, or for services or other consideration in respect of which that allotment was made, such contracts being duly stamped, and a return stating the number and nominal amount of shares so allotted, the extent to which they are to be treated as paid up, and the consideration for which they have been allotted.

COMPANIES (CONSOLIDATION) ACT, 1908.

to the \_\_\_\_\_ of \_\_\_\_\_ 191 \_\_\_\_\_ of \_\_\_\_\_

Made pursuant to s. 88 (1) of the Companies (Consolidation) Act, 1908.

\*When several Allotments are made on different dates, the dates of only the first and last of such Allotments should be given. When there is one Allotment only, made on one particular date, that date only should be inserted, and the spaces for the second date struck out and the word "made" substituted for the word "from" after the word "Allotments."

Nominal amount of the Shares so allotted .....

11 12 13 14 \* \* \* \*

Amount paid or due and payable on each such Share

" " " " "

Number of Shares allotted for a consideration	}	_____
other than cash .. .. .		

Nominal amount of the Shares so allotted .....

Amount to be treated as paid on each such Share..\_\_\_\_\_

The consideration for which such Shares have been allotted is as follows :—

*[The following section contains several horizontal lines representing redacted information.]*





Where such a contract as above mentioned is not reduced to writing, the company must within one month after the allotment file with the Registrar of Companies the prescribed particulars of the contract, stamped with the same stamp duty as would have been payable if the contract had been reduced to writing, and those particulars are deemed to be an instrument within the meaning of the Stamp Act, 1891, and the Registrar may, as a condition of filing the particulars, require that the duty payable thereon be adjudicated under Section 12 of that Act.

Certificate No. \_\_\_\_\_

## THE COMPANIES (CONSOLIDATION) ACT, 1938.

## PARTICULARS PRESCRIBED UNDER SECTION 88, SUBSECTION 2.

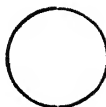
(1) The number of shares, in whole or in part, allotted for a consideration other than cash.

(2) If the consideration for the allotment of any shares is services, or any consideration other than that mentioned below in part 3, state what such consideration consists of.

(3) If the consideration for the allotment of any shares is a sale of property, or the agreement for the sale of property, state fully the consideration for, and other terms of, such sale or agreement for sale.

Reserved for Binding.

Filed by



A 5s.  
Companies  
Registration  
Fee Stamp  
must be  
impressed  
here.

Limited.

- (4) Give full particulars, in the form of the following table, of the property which is the subject of the sale, showing in detail how the total consideration is apportioned between the respective heads :—

Equitable estates, or interests in freeholds and leaseholds, whether in the United Kingdom or abroad (which includes hereditaments subject to a legal Mortgage)

£

Patents, Licences, Trade Marks and Copyrights

£

Goodwill

£

Fixtures and Fittings

£

Book and other debts (including money on deposit at Bank or elsewhere)

£

Benefit of Contracts

£

Other property, viz. :—

Total ..

£

- (5) If the consideration payable is partly in respect of a sale of property or agreement for a sale of property, and partly in respect of some other consideration, state fairly how much of the amount of the consideration is attributable to each of the heads of the property sold or agreed to be sold, and how much to such other consideration.

- (6) If the consideration payable consists in the assumption by the purchaser of liabilities to third persons, specify the total amount of such liabilities.

Signature \_\_\_\_\_

Designation of position in relation to the Company\* \_\_\_\_\_

Date \_\_\_\_\_ 191 .

\*Here insert Managing-Director or Manager, or other Officer of the Company, as the case may be.

If default is made in complying with the requirements of this section, every director, manager, secretary, or other officer of the company, who is knowingly a party to the default, is liable to a fine not exceeding fifty pounds for every day during which the default continues :

Provided that, in case of default in filing with the Registrar of Companies within one month after the allotment any document required to be filed by this section, the company, or any person liable for the default, may apply to the Court for relief, and the Court, if satisfied that the omission to file the document was accidental or due to inadvertence or that it is just and equitable to grant relief, may make an order extending the time for the filing of the document for such period as the Court may think proper.

Money payable by any member to the company under the memorandum or articles is, in accordance with Section 14, Subsection 2, of the Act, a specialty debt, and proceedings to recover same may be brought at any time within twenty years after the date when the cause of action arose.

It frequently happens that shares are allotted to nominees of the vendor, in which case a supplemental contract should be filed, or a nomination—stamped before execution with a 6d. stamp, if the amount is over £5, as a letter of renunciation—executed by the vendor.

#### *Share Certificates.*

The *prima facie* evidence of title which the member of a company possesses is the share certificate, a document

which does not require a stamp, but which must under Section 92 of the Act, unless the conditions of issue otherwise provide, be complete and ready for delivery within two months of the allotment or registration of the transfer.

A settlement on the Stock Exchange will not be granted until the certificates are ready for delivery.

Should the certificate be lost, the company, before supplying a new certificate, will require a letter of indemnity to be given by the shareholder, of which the following is a usual form :—

*To the Directors,—*

A. B. C. COMPANY, LIMITED.

GENTLEMEN,—

Having lost the Certificate of Title numbered ....., dated the .....day of....., relating to the.....Ordinary Shares of.....each, numbered.....to.....inclusive, in the above-named Company, of which I am the Registered Holder, I request you to issue to me a fresh Certificate of Title to such Shares, and in consideration thereof I undertake to indemnify you against all actions, proceedings, claims, and demands which may be brought or made against you, or the Company, in consequence of your having issued such fresh Certificate, or in consequence of your permitting at any time hereafter a transfer of the above Shares, or any of them, without the production of the original Certificate above referred to. I also undertake to indemnify you for all costs and expenses incurred in advertising the pending issue of the new Certificate.

And I.....  
of .....  
concur in the above request, and guarantee the performance by the said .....of the above undertaking.

Signature of Shareholder.....  
Full Address.....  
Signature of Guarantor.....  
Full Address.....  
Description.....



Dated the.....day of.....

By Section 37 of the Act a company may, if authorised by its articles, issue share warrants in respect of fully-paid shares, the warrants being negotiable instruments passing by delivery.

The stamp duty payable on the issue is 30s. per cent., treble the amount of a transfer by deed.

#### *Transfer of Shares.*

Shares are transferable from one person to another in accordance with the provisions of the articles of association. The transfer must be in writing and duly stamped, and may be in the form specified by the articles, or the "common form" obtainable at the law stationers, or sometimes it is by deed.

A transfer of shares is said to be in blank when a material part, such as the name of the transferee, is not stated in the instrument.

If the transfer is by deed it must be signed, sealed, and delivered; and a blank transfer cannot be used (unless accompanied by a power of attorney), as in the case of a transfer in writing.

The transfer, accompanied by the share certificate, is then lodged with the secretary of the company, who brings it before the board for their sanction to register the transfer. The articles frequently prohibit transfer of shares upon which there are calls in arrear, and power is sometimes given to directors to refuse to register a transfer without assigning any reason for their action.

In the absence of any restrictions in the articles, the directors cannot refuse to register a transfer, even if

the transfer is made for the purpose of escaping liability for calls or of increasing the member's voting power.

Before passing transfers and issuing new share certificates the directors should—

- (1) Compare the entries in the Register of Transfers with the transfers.
- (2) Examine and cancel the share certificates deposited by the transferor.
- (3) Check the particulars contained in the new certificate.

In large companies it is frequently the practice for the auditors to attend at the offices of the company prior to the board meeting to perform this work.

On the receipt of a transfer a receipt should be given in the following form :—





[illegible]

**PREFERENCE SHARES.**

**PREFERENCE SHARES.**

X. Y. Z. AND COMPANY, LIMITED.

No.....

LONDON,..... 19.....

J. C.

Balance Receipt for ..... Shares

Numbered as in margin hereof.

Name.....

Delivered to.....

**Transfer Office Hours, 11 to 3; Saturdays Excepted.**

Subject to approval of Directors.

X. Y. Z. AND COMPANY,  
LIMITED.

[illegible]

No.....

.....19.....

Balance for .....Shares

[illegible]

in name of.....

Delivered to.....

The signature of the transferor should be compared with the signature on the original application or transfer, and a notice should *always* be sent to him stating that such transfer has been lodged.

Care must be taken to see that transfers are properly stamped, particularly when the consideration is only "nominal."

If a shareholder hold a certificate for a larger number of shares than he wishes to transfer, the certificate and transfer form are lodged at the registered office of the company, and the secretary certifies upon the transfer that the certificate has been so lodged and returns it to the owner, at the same time handing him a balance receipt for the surplus shares in excess of those transferred, the share certificate being retained by the company. As several transfer deeds are frequently certified from the same certificate, it is desirable to enter on the back of the certificate the distinctive numbers of the shares transferred and the number of the transfer, the date and number of the new certificates issued being marked off in order to clearly show certified transfers not yet sent in for registration.

#### *Forged Transfers.*

A forged transfer gives the transferee named therein no title to the shares, and if the company remove the name of the true owner from the register he can compel the company to replace him and restore to him his shares.

If, however, the company issue a share certificate on a forged transfer, and the transferee disposes of the shares, the company must make good to a *bonâ fide* purchaser any loss he may sustain.

The company is, however, entitled to be indemnified by the person who lodged the transfer, as there is an implied warranty on his part that the transfer is genuine. (*Starkey v. Bank of England* (1903), App. Ca. 114; *Sheffield Corporation v. Barclay* (1905), App. Ca. 392.)

The Forged Transfers Acts, 1891 and 1892, give power to a company to make compensation by means of a cash payment for any loss arising from a forged transfer, or a transfer executed under a forged power of attorney.

*Distringas.*

Order 46 of the Rules of the Supreme Court enables any person who claims to be interested in shares standing to the credit of another person in the books of the company to prevent the transfer of such shares or the payment of dividend thereon by serving a notice on the company.

An affidavit must be filed by the claimant at the central office, and an office copy and duplicate notice served on the company.

On receipt of a transfer by the person whose name appears on the register, notice must be given to the person issuing the *distringas* that the company will pass the transfer unless an order of the Court is obtained within eight days.

A *charging order* may also be obtained by a judgment creditor on any shares standing in the name of the judgment debtor, unless he is merely a trustee for such shares, or has parted with his interest so that his right therein has passed to a transferee.

## CHAPTER IV.

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**Debentures.**

A company will frequently raise part of the capital required by the issue of debentures or debenture stock, although, unless the memorandum or articles so provide, a company has no power to borrow unless such borrowing is properly incidental to the conduct of its business. Thus, an ordinary trading company has an implied power to borrow and to give security.

A debenture may be defined as an instrument under seal creating or acknowledging a debt for a definite or indefinite time, and engaging on the expiration of such period to repay the sum, and in the meantime to pay interest thereon at a specified rate.

Debentures may be classified as follows :—

- (1) *Simple or Naked Debentures*, which give no charge on the assets of the undertaking, and are merely promises to repay the loan.
- (2) *Floating Debentures*, which give an equitable charge on the assets of the company.
- (3) *Mortgage Debentures*, frequently secured by a trust deed.

A debenture differs from debenture stock, inasmuch as, whilst the former is merely a document under seal, the latter term is applied to the loan itself.

Debentures are only transferable in the amount of each debenture, whereas debenture stock can be split up into fractional parts.

Both may be either redeemable or perpetual, and debentures may be made payable either to registered holder or to bearer, in which latter case they are negotiable.

Stamp duty at the rate of 2s. 6d. per cent. is payable on the issue of debentures.

It is desirable to here briefly explain the meaning of a "floating charge," as the security given by a company to its debenture-holders usually partakes of this nature.

Until the charge becomes enforceable, it attaches to the property of the company for the time being, but does not preclude the company from selling, mortgaging, or otherwise dealing with any specific portion thereof, provided such transactions are in the ordinary course of the company's business.

If, however, the company goes into liquidation, or some other specified event occurs, the charge "crystallises," that is to say, becomes "fixed," the usual course then being for the debenture-holders to appoint a receiver, either under powers contained in the debenture itself or trust deed, or by application to the Court.

A floating charge created within three months of the commencement of the winding-up is void, except as regards any cash paid to the company at the time of or subsequently to the creation of the charge and in consideration thereof, with interest at 5 per cent. per annum,

unless it can be shown that at the time of the creation of the charge the company was solvent without taking into account the property included therein. (Section 212.)

It has been held, however, that where a director agreed at a meeting of the board to advance moneys to the company on debenture, the company being hard pressed for money at the time, and actually paid in the cash before the execution of the charge, the security was nevertheless good against the liquidator.

A company can give a charge over all its property, including book debts not yet due, or on its uncalled capital, unless such capital can only be called up on liquidation of the company. A power to charge "the property of the company" or its "undertaking and property" or "its property and effects" is not sufficient to authorise a charge on its uncalled capital. Nevertheless, a company can do so if power is given to mortgage its "assets" or its "property and rights" or "its property and effects, or in such other manner as the company may determine."

A bank which grants a company a large overdraft will frequently require the issue of a debenture as security, the amount of the debenture being the extent to which the company is entitled to overdraw.

Sometimes, however, where a company has already issued part of the debentures authorised, the bank will require the deposit of debentures in excess of the amount which the company is allowed to overdraw, thus placing it in a more favourable position in the event of the assets proving insufficient to satisfy the whole of the debentures issued.

Although the issue of a debenture to a bank as security must be recorded in the Register of Mortgages, and filed with the Registrar of Joint Stock Companies, being also shown on the annual return, no entries are necessary in the financial books.

The existence of the charge must, however, be disclosed in the Balance Sheet, the amount of the debentures being entered *short*, thus :—

	£	s	d
<i>First Mortgage Debenture</i> ... ..	£5,000		
(Issued to secure bank overdraft)			
<i>Bank overdraft</i> ... ..		4,318	16 1

Or sometimes the note will be appended to the loan itself :—

<i>Bank overdraft</i> ... ..	4,318	16	1
(Secured by issue of £5,000 first mortgage debentures).			

Section 103 gives power to a company to issue perpetual debentures, and by Section 104 a company which has an authorised debenture issue may reissue redeemed debentures in certain cases, although, for the purposes of stamp duty, the reissue is treated as the issue of a new debenture.

A contract to take debentures may be enforced by an order for specific performance.

Debentures may be issued at a discount unless the articles prohibit such issue. The Registrar of Joint Stock Companies must be notified of the amount of such discount (Section 93 (4)), and it must be shown in the Annual Summary (Section 26 (2) (f)). In the Balance



Sheet the debentures must be stated at the full nominal value, the discount allowed being shown separately among the assets. (Section 90.)

The issue of debentures at a discount is equivalent to increasing the rate of interest paid.

Thus 4 per cent. debentures issued at 80 would yield the same revenue as 5 per cent. debentures issued at 100, and if the former were redeemable at the end of twenty years there would be a further 1 per cent. profit each year, payable without interest at that time.

Directors should therefore exercise considerable care on making an issue of debentures, or they may find the company pledged to financial liabilities beyond its resources. It is useless also to attempt a debenture issue unless the security offered is substantial. For instance, a company whose only assets consisted of patent rights or goodwill could not hope to make a successful issue of debentures, as it could offer no realisable security for the loan.

Another result of a debenture issue is to weaken the credit of the undertaking. Very frequently the main object of issue—namely, to obtain more working capital is avoided, and a directly opposite result effected owing to creditors giving shorter credit. Particularly is this the case where debentures are issued at a heavy discount.

## CHAPTER V.

REGISTRATION OF COMPANY—FEES PAYABLE ON  
INCORPORATION.**Registration.**

Before the registration of the company can be effected there must be filed with the Registrar of Joint Stock Companies—

- (1) The *Memorandum of Association* (a printed copy), signed by seven signatories, each of whom, in his own handwriting, must state opposite his signature the number of shares he takes, which cannot be less than one share, and for which payment must be made in cash.

The Registrar will not accept the signature of an infant, corporation, or firm, but a foreigner may be a subscriber.

- (2) The *Articles of Association* (unless Table A is adopted), also signed by the signatories to the memorandum.

(Both the memorandum and articles must be impressed with a 10s. deed stamp.)

- (3) A list of directors.
- (4) The written consent of the directors to act, signed either by themselves or by their agents authorised by writing to sign on their behalf; and written authority by the directors to file this assent with the Registrar.

(This is only necessary if the first directors are appointed by the articles or named in the prospectus as directors or intending to become directors.)

- (5) A statement of nominal capital. (Official Form No. 15.)
- (6) A statutory declaration by a solicitor of the High Court who has been engaged in the formation of the company, or by some person named in the articles as director or secretary of the company, that all the requirements of the Companies (Consolidation) Act in respect of the registration and of matters precedent and incidental thereto have been complied with. (Official Form No. 41.)

### Fees Payable.

The fees payable on the registration of a public limited company are as follows :—

Stamp Duty on Capital ... .. 5s. per cent.

Fee Stamp on Memorandum of Association :—

If Nominal Capital does not exceed £2,000 ... £2

And increasing according to scale to a maximum fee of £50 as follows :

On the first £2,000 ... .. £2

For every £1,000 or part of £1,000—

After the first £2,000, up to £5,000 ... £1

After the first £5,000, up to £100,000... 5s.

After the first £100,000 ... .. 1s.

Deed Stamp on Memorandum of Association ... 10s.

Fee Stamp on Articles of Association (if any) ... 5s.

Deed Stamp on Articles of Association (if any) ... 10s.

Notice of situation of Registered Office ... 5s.

Copy Register of Directors ... .. 5s.

Declaration of compliance with regulations of Companies Act ... .. 5s.

Consent to act as Director	... ..	5s.
Contract by Directors to take Qualification Shares (when not signed for in Memorandum of Association)		5s.
Agreement Stamps on same (each signature)	... ..	6d.
List of Persons who have consented to be Directors...		5s.
Particulars of Contract of Sale under Subsec. 2, Section 88, of The Companies (Consolidation) Act, 1908	... ..	5s.
Prospectus (when filed) or Statement in lieu of Pro- spectus	... ..	5s.

A registration stamp of five shillings is also payable on each of the following forms :—

- (1) On declaration of public company before commencement of business.
- (2) Return of allotments.
- (3) Report prior to statutory meeting.
- (4) Form for entry of memorandum of satisfaction of debt.
- (5) Form E (annual return).

On registering any increase in the nominal capital of a company limited by shares further fee stamps have to be paid until the maximum of £50 is reached, together with a recording stamp of five shillings on the document termed the Notice of Increase of Capital. Capital duty at the rate of five shillings per £100 has also to be paid on the nominal amount of the increase.

When the necessary fees have been paid, and when satisfied that the various statutory requirements have been fulfilled, the Registrar issues a certificate of incorporation, which is conclusive evidence that the company is duly registered under the Act.

## CHAPTER VI.

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**Underwriting.**

Very few public issues are made which have not been previously "underwritten," that is to say, certain agreements entered into with persons called "underwriters," whereby they, in consideration of a payment in cash or shares, undertake to apply for a given number of shares, if the public or persons invited to subscribe do not do so.

The object is, of course, to ensure that sufficient subscriptions for shares will be obtained to enable the company to acquire the property, on which, perhaps, only an option has been obtained by the promoters; or to make certain that proper working capital will be available; or to cover the expenses of issue; whilst if the minimum subscription upon which the directors may proceed to allotment is of any substantial amount, it is usual to take the precautionary step beforehand of underwriting such minimum subscription, so that it may be certain that the company will go to allotment.

Full disclosure of these underwriting contracts must be made in the prospectus, it being provided by Section 89 of the Act that the payment must be authorised by the articles, and disclosed in the prospectus or statement in lieu of prospectus, and the amount paid or agreed to be paid must not exceed the amount so authorised.

An underwriter may, however, have the option of subscribing for further shares at par, and such an arrangement is not regarded as coming within the section. (*Hilder v. Dexter* (1902), App. C.A. 474.)

Very often shares are underwritten "firm," that is to say, the underwriters actually apply for the whole or part of the shares underwritten, the practical result being that such shares are issued at a discount equivalent to the underwriting commission allowed.

The general practice as regards underwriting contracts is for the whole of the shares to be underwritten by some person or syndicate, and for such person or syndicate to re-insure their risks by entering into sub-underwriting contracts with other parties.

The commission paid to the underwriter is then in two parts—namely, a certain fixed rate, which presumably will have to be allowed to the sub-underwriters; and a further consideration, called "overriding commission," which is supposed to be retained by the underwriter as remuneration for services rendered in placing the underwriting.

Although theoretically such is the case, it very frequently happens that the sub-underwriters require both the underwriting and overriding commission.

A common practice, which is undoubtedly a contravention of the law as prescribed by Section 89, Subsection 2, is for the promoters to give away a certain number of shares to the underwriters, in addition to the amount of consideration disclosed in the prospectus. It

94  
12

seems evident that such additional consideration should be disclosed in the prospectus, unless made by some person not a vendor or promoter.

The difficulty of obtaining good underwriting, and the heavy commissions which have to be paid by some companies, are a constant source of discussion among those intimately connected with company flotation work, and it would be to the general benefit of the investing public if underwriters had to give some guarantee of their *bonâ fides* and ability to carry out their contracts; as it frequently happens, if the issue is not successful, that the underwriters prove to be what, in the City, are known as "duds."

At the present time a sound undertaking will pay from 2 to 5 per cent. "underwriting" and from 1 to  $2\frac{1}{2}$  per cent. "overriding" commission, which on a large capital is a heavy burden. If the proposition is known to be "good," the underwriting is given out to promoters and their friends, who thus make a handsome profit with little risk.

On the other hand, another concern may only get its underwriting done after considerable "hawking" round the City and after payment of heavy commissions, disclosed in very small type in the prospectus, and by the gift of large bonuses, which are not mentioned.

If the shares are taken up by the public the unlucky investors subsequently find that in effect they have paid a premium for shares which in the market lists appear at a heavy discount. If, on the other hand, the underwriters are called upon, the usual result is for the shares

to be placed in the hands of outside brokers, and eventually foisted on to the unsuspecting and trusting "speculator."

A more ingenious dodge sometimes adopted is for a syndicate to agree to take firm all the shares of a company at an underwriting commission of, say, 50 per cent., and for the syndicate to issue the prospectus offering the shares to the public, in which, of course, no mention is made, or required to be made, of the terms of the underwriting contract.

To abolish underwriting might in some cases result in a certain amount of hardship, but the effect would be to reduce by one-half the number of public issues; to nip in the bud numberless hopeless propositions, which are from the first doomed to failure; and to carry out the intention of the Legislature in prohibiting the issue of shares at a discount, namely, that the company shall receive as capital the *full* amount subscribed by each member.

The moral effect would also be great. Directors, brokers, solicitors and auditors, often owe their position on the front page of a prospectus to the amount of underwriting they have taken. The advertising contractors and the printers are only given the work provided they take their share; even the bankers are sometimes expected to interest some group to "do a line."

The result is that the amount of the preliminary expenses is proportionately increased, and exorbitant charges passed, in consideration of the assistance afforded in financing the scheme.



Alternatively, it is suggested that it would be a wise provision to insist that a statement should appear on the *front* page of the prospectus and in every abridged prospectus appearing in the newspapers setting out the actual amount in cash or shares to be paid by the company or the promoters for underwriting, as at present the disclosure is made in small type at the end, and is overlooked by investors.

The underwriting and sub-underwriting letters, which should always be settled by the solicitor engaged in the formation of the company, require acceptance to make them binding.

The following is a form of sub-underwriting letter :—

## X. Y. Z. COMPANY, LIMITED.

CAPITAL £300,000, Divided into 100,000 Preference Shares and 200,000 Ordinary Shares of £1 each.

## ISSUE OF 100,000 PREFERENCE SHARES OF £1 EACH.

## SUB-UNDERWRITING LETTER.

To A. B., Esq., \_\_\_\_\_, London.

SIR, Referring to your statement that you are underwriting 100,000 shares of the above issue and to your invitation to me/us to participate in the same by way of sub-underwriting I/we beg to inform you that I am/we are willing so to participate to the extent and upon the terms and conditions following, viz.:-

1. I am/we are willing to sub-underwrite ..... of the above shares at an underwriting commission of five per cent.
2. The sub-underwriting so far as I am/we are concerned shall be deemed for every purpose to have been based upon the Prospectus as finally settled and filed at the office of the Registrar of Joint Stock Companies and this shall be so notwithstanding that I/we may not have seen the form of Prospectus so settled and filed or may on the other hand have seen other forms thereof differing from the form so settled and filed so long as the whole of the above issue is offered to the public and the Prospectus shall be first advertised not later than the 27th day of March 1912.
3. I/we enclose accordingly an application form signed by me/us for the above ..... shares together with a cheque in favour of your Company for £: ..... being the amount payable on application in respect of the said shares. If any particulars in the said application form are not inserted or are incorrect you are authorised to insert or correct the same so as to make the form tally with the application form accompanying the filed Prospectus.
4. If within seven days after the first advertisement of the said Prospectus the whole of the said 100,000 shares have been applied for by and allotted to the public I am/we are to be under no liability to subscribe for the above ..... shares or any of them and thereupon you will procure the return to me/us of the above application form and the amount of my/our said cheque.
5. If within the like period the whole of the said 100,000 shares have not been applied for by and allotted to the public you will procure the due allotment by the Company of all shares applied for by public applicants the Company however having the right to reject any such application which it may not deem *bona fide* or responsible. After such allotment by the Company the balance of the said 100,000 shares remaining unallotted shall be calculated, and the amount of the shares unallotted shall be apportioned *pro rata* between myself/ourselves and my/our co-sub-underwriters for the said total of 100,000. The Company shall thereupon be at liberty to allot to me/us my/our *pro rata* proportion of the said shares calculated as above mentioned. All applications initialled by me/us and approved by you and the Company sent in by me/us to the Company prior to the time fixed by the Prospectus for closing the list of subscribers are to be applied in relief of my/our obligation to subscribe hereunder and shall not be considered subscriptions by the public.
6. Any allotment to me/us so made by the Company shall be made not later than fourteen days after the first advertisement of the said Prospectus.
7. You are at liberty to produce or lodge this sub-underwriting letter and the said application form to or with the Company at such times and in such manner as may be necessary to enable you to fulfil your own underwriting contract with the Company or as may be reasonably required by the Company.

8. In the event of any shares being allotted to me/us by the Company under the provisions of this letter your Company shall be entitled to apply the amount of the said cheque after provision for the application moneys towards the sum payable on allotment. Any surplus shall be returned to me/us.

9. I/We undertake not to withdraw this sub-underwriting letter. If for any reason my/our application form for the said ..... shares should not be forthcoming at the proper time I/we hereby appoint you my/our agents to fill up, sign and lodge in my/our name and on my/our behalf an application form for the said ..... shares, if and so far as may be necessary I/we authorise and empower you on my/our behalf to pay the application or allotment moneys in respect of the said shares, and to recover the same from me/us.

10. The basis of this Agreement being that I am/we are sub-underwriters and you are underwriters to the above Company I/we expressly agree with you and also with you as the agent of the above Company that the above Company may at any time take such proceedings as it may think fit, against me/us direct without joining you as a party for the enforcement of any of its rights against me/us under this Agreement and the production of this letter by the Company shall be conclusive proof of its right to proceed.

11. It is understood that whether I am/we are required to take up any of the above shares or not you will pay me/us the said commission of five per cent. upon the said ..... shares underwritten within 7 days from the date the Company receives its Certificate from the Registrar of Joint Stock Companies until it commences business, but nevertheless if an allotment is made to me/us the said commission shall not be payable to me/us until I/we shall have paid the allotment moneys in respect of such allotment and you are to be at liberty to apply so much of the said commission as may be necessary to that purpose.

12. I/we incur no liability hereunder unless the whole of the said 100,000 shares are sub-underwritten by responsible persons or companies not later than the 29th day of February 1912. But in the event of any sub-underwriter to fulfil his obligations after he shall have been approved by the above Company but before the liability of the sub-underwriters shall have been finally ascertained there is no objection to your ranking as and undertaking the responsibilities of a sub-underwriter to that extent.

13. Any notice may be served on me/us by sending the same to me/us through the post at the address mentioned below and service shall be deemed to have been effected on the day after the same is posted.

14. This letter requires acceptance on your part.

Signature of Sub-Underwriter.....

Address .....

Date.....

Accepted for A. B., this.....day of.....1912

I/We acknowledge receipt of notice of acceptance of the above sub-underwriting proposal this.....day of.....1912.

At least fourteen days before the issue of the prospectus notice must be given to those persons who have promised to obtain underwriting to send in their underwriting letters, so that the promoters may know that they have actually got available the amount of capital they expected.

In addition to the power conferred by the Act to pay underwriting commission, a company may pay a commission or brokerage for placing its shares, and such commission or brokerage may be paid by the vendor or promoter out of the amount received by him, provided it is lawful for the company itself to pay same.

By Section 90, where a company has paid any sums by way of commission in respect of any shares or debentures, or allowed any sums by way of discount in respect of any debentures, the total amount so paid or allowed, or the balance not written off, must be stated in every Balance Sheet until the whole amount is eliminated.

The total amount must also be shown in the *next* Annual Summary made after the payment of the commission or allowance of the discount.

## CHAPTER VII.

## PROMOTER AND PROSPECTUS—ADVERTISING.

**Promoter and Prospectus.**

The term “promoter” signifies “one who undertakes  
“to form a company with reference to a given object  
“and to set it going, and who takes the necessary steps  
“to accomplish that purpose.”

He stands in a fiduciary position to the company, and is liable to refund any secret profits, and must make full disclosure in the prospectus.

Sometimes the actual vendor of an established business acts as promoter, but more usually the promoter of the company has got an option on some undertaking which he resells to the company at a profit which will compensate him for the trouble and risk he has to take in preparing the prospectus, obtaining directors, and underwriting and floating the company.

To facilitate the preliminary negotiations, to avoid liability, and frequently to hide the identity of the actual promoters, it is usual to register a small syndicate for the express purpose of promoting the company. This syndicate acts as the intermediary between the vendor and the company, and finds the necessary moneys for deposits on purchase, preliminary expenses, &c.

The drafting of the prospectus is a matter which requires the expenditure of considerable time and trouble, and is by no means as simple as would appear at first sight. The ideal prospectus should be as short as possible, and tersely set out, under appropriate headings, the main facts which are to be brought to the notice of intending investors. Long reports, extracts from blue books, and complicated comparative statements of profits may be very convincing to those interested in the promotion of the company, but the man in the street has neither time nor inclination to take up the study of the proposition as a hobby. Like all successful advertising, the prospectus must "catch the eye" of the public, if it is to do any good.

Care must be taken, however, that no statement is made which cannot be substantiated by documentary evidence. Counsel (to whom every prospectus should be submitted before publication) will refuse to pass any matter that cannot be proved in this way, and the amateur at the game will find his beautiful sentences—brimful of pathetic appeals to eager investors to seize the golden opportunities offered—ruthlessly eliminated.

The choice of the board of directors, brokers, solicitors, and auditors will occupy some considerable time; and in this connection it may not be out of place to mention that the record of each should be carefully considered before any invitation is extended to join the company.

There are plenty of "eligibles" for directorships who are quite good fellows personally, and who have never been guilty of any dishonourable action, but who, through association with "rotten" concerns, have earned an undesirable reputation, consequently their connection with a new company raises some suspicion, and may have an adverse effect on the issue.

### *Prospectus.*

A prospectus is defined by Section 285 of the Companies (Consolidation) Act as any prospectus, notice, circular, advertisement, or other invitation offering to the public a subscription or purchase in shares or debentures of a company.

Every prospectus issued by or on behalf of the company, or by or on behalf of any person who is, or has been, engaged in the formation of the company, must state :—

- (a) the contents of the memorandum, with the names, descriptions, and addresses of the signatories, and the number of shares subscribed for by them respectively; and the number of founders' or management or deferred shares, if any, and the nature and extent of the interest of the holders in the property and profits of the company; and

- (b) the number of shares, if any, fixed by the articles as to the qualification of a director, and any provision in the articles as to the remuneration of the directors; and
- (c) the names, descriptions, and addresses of the directors or proposed directors; and
- (d) the minimum subscription on which the directors may proceed to allotment, and the amount payable on application and allotment on each share; and in the case of a second or subsequent offer of shares, the amount offered for subscription on each previous allotment made within the two preceding years, and the amount actually allotted, and the amount, if any, paid on the shares so allotted; and
- (e) the number and amount of shares and debentures which within the two preceding years have been issued, or agreed to be issued, as fully or partly paid up otherwise than in cash, and in the latter case the extent to which they are so paid up, and in either case the consideration for which those shares or debentures have been issued or are proposed or intended to be issued; and
- (f) the names and addresses of the vendors of any property purchased or acquired by the company, or proposed so to be purchased or acquired, which



is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus, or the purchase or acquisition of which has not been completed at the date of issue of the prospectus, and the amount payable in cash, shares, or debentures, to the vendor, and where there is more than one separate vendor, or the company is a sub-purchaser, the amount so payable to each vendor : Provided that where the vendors or any of them are a firm the members of the firm shall not be treated as separate vendors ; and

- (g) the amount (if any) paid or payable as purchase money in cash, shares, or debentures, for any such property as aforesaid, specifying the amount (if any) payable for goodwill ; and
- (h) the amount (if any) paid within the two preceding years, or payable, as commission for subscribing or agreeing to subscribe, or procuring or agreeing to procure, subscriptions, for any shares in, or debentures of, the company, or the rate of any such commission : Provided that it shall not be necessary to state the commission payable to sub-underwriters ; and
- (i) the amount or estimated amount of preliminary expenses ; and
- (j) the amount paid within the two preceding years or intended to be paid to any promoter, and the consideration for any such payment ; and

- (k) the dates of and parties to every material contract, and a reasonable time and place at which any material contract or a copy thereof may be inspected: Provided that this requirement shall not apply to a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company, or to any contract entered into more than two years before the date of issue of the prospectus; and
- (l) the names and addresses of the auditors (if any) of the company; and
- (m) full particulars of the nature and extent of the interest (if any) of every director in the promotion of, or in the property proposed to be acquired by, the company, or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares or otherwise by any person either to induce him to become, or to qualify him as, a director, or otherwise for services rendered by him or by the firm in connection with the promotion or formation of the company; and
- (n) where the company is a company having shares of more than one class, the right of voting at meetings of the company conferred by the several classes of shares respectively.

The following points in connection with the requirements of Section 81 should be noted :—

1. (a) (b) (c) (i) (m).—

The contents of the memorandum; qualification and remuneration of directors and their names, descriptions, and addresses; an estimate of the preliminary expenses; and the interest of directors and promoters, need not be disclosed in the case of a prospectus issued more than one year after the company is entitled to commence business.

2. (b) *Director's Qualification.*—

Although not necessary for a director to hold qualification shares, the Stock Exchange Committee will not grant a special settlement and quotation of the shares unless some qualification exists.

3. (d) *Minimum Subscription.*—

Section 85 provides :—

(1) No allotment shall be made of any share capital of a company offered to the public for subscription unless the following conditions have been complied with, namely—

(1) The amount (if any) fixed by the memorandum or articles, and named in the prospectus as the minimum subscription upon which the directors may proceed to allotment; or

- (2) If no amount is so fixed and named, then the whole amount of the share capital so offered for subscription ;

has been subscribed, and the sum payable on application for the amount so fixed and named, or for the whole amount offered for subscription, has been paid to and received by the company.

- (2) The amount so fixed and named, and the whole amount aforesaid, shall be reckoned exclusively of any amount payable otherwise than in cash, and is in this Act referred to as the minimum subscription.

- (3) The amount payable on application on each share shall not be less than *five per cent. of the nominal value of the share.*

Subsection 4 provides for the repayment of all moneys received on application, if the minimum subscription is not received within 40 days of the issue of the prospectus, the directors being personally liable after the expiration of 48 days for repayment of the moneys, with interest at five per cent. per annum, unless any director can show that any loss was not due to misconduct or negligence on his part.

Any waiver clause is void.

These provisions only apply to the *first* issue. On subsequent issues it is sufficient to state the amount offered for subscription on each previous allotment during the preceding two years, and the amount actually allotted and the amount paid on the shares so allotted.

The amount payable on application must be actually received by the company; thus, where a cheque for application money was received on the day of allotment, the allotment of the shares was bad, inasmuch as the cheque was not cleared for ten days (*National Motor Mail Coach Co.* (1908), 2 Ch. 228).

The minimum subscription should be sufficient to cover the cash purchase price of the property to be acquired, the costs of the issue, and a balance large enough to provide the company with working capital. The minimum subscription is often made to correspond with the amount underwritten.

It is to be regretted that the Act does not *fix* a *minimum* subscription, as it is a common practice to make the amount *seven* shares, so that the directors may proceed to allotment if enough applications are received from the public to pay the cost of issue and promoters' profits; the company itself starting its career without working capital or any hope of success.

In this way the very object of the section is avoided.

An irregular allotment is not *void*, but only *voidable* at the instance of any person to whom shares have been allotted, and who applies for the removal of his name from the register within one month after the date of the statutory general meeting. Application can be made even although the company is in course of being wound up (Section 86), but the applicant, after the discovery of the irregularity, must not in any way acquiesce in it or

he will be precluded from avoiding the allotment. (*Finance and Issue, Lim. v. Canadian Produce Co.* (1905), 1 Ch. 37.) The provisions of Section 86 apply whether the company has issued a prospectus or filed a statement in lieu thereof.

4. (e) *Shares and Debentures Issued for a Consideration other than Cash within Two Years Preceding.—*

This clause is to prevent a company which has had an abortive issue publishing a prospectus without disclosing shares issued as paid up, or partly paid up, to promoters or their connections.

5. (f) *The Names of the Vendors and the Amounts Payable to Them.—*

By Subsection 2 the vendor is described as any person “who has entered into any contract, absolute or conditional, for the sale or purchase, or for any option of purchase of any property where—

“(a) The purchase-money is not fully paid at the date of issue of the prospectus.

“(b) The purchase-money is to be paid or satisfied, wholly or in part, out of the proceeds of the issue offered for subscription by the prospectus; or

“(c) The contract depends for its validity or fulfilment on the result of that issue.”

The term “vendor” includes lessee, where the property to be acquired is to be taken on lease, and the

expression "purchase-money" includes consideration for the lease, and the term "sub-purchaser" includes sub-lessee.

It should be noted that the address of the vendor has to be stated in addition to his name.

The object of this clause is, of course, to prevent persons acquiring a property at a low price reselling to a syndicate for a consideration in cash and shares, and the syndicate selling to the company at a greatly enhanced price without disclosing to intending investors the original purchase-money.

5. (k) *Material Contracts.*—

Every contract which, upon a reasonable construction of its purport and effect, would assist a person in determining whether he would become a shareholder is a material contract, and must be disclosed in the prospectus.

If the prospectus be published as a newspaper advertisement, it is not necessary to specify therein the contents of the memorandum or the signatories thereto.

In addition to the provisions of Section 81, by Section 80 every prospectus issued on behalf of the company must be dated, such date being *the date of publication*. A copy of such prospectus, signed by every person who is named therein as a director or proposed director, or by his agent authorised in writing, must be filed with the Registrar of Joint Stock Companies on or before the date of its publication, and the prospectus must state on

its face that a copy has been so filed for registration. The issue of a prospectus contrary to this section entails a penalty on every party cognisant of the fact not exceeding £5 per day during which the default continues.

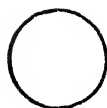
From a decision in *Re Sherwell v. The Combined Incandescent Mantles Syndicate* (1907, T.L.R. 23, 482), it would seem that to offer shares to the public means an offer by the company to anyone who chooses to come in and take shares. The offer of shares to the members of an old company on reconstruction (*Booth v. New Afrikander Gold Mining Co.* (1903), 1 Ch. 295), or the distribution of forty notices of a circular by the proposed directors of the intended company among their business acquaintances (*Sleigh v. Glasgow and Transvaal Operations* (1904), Court of Session, 6 F. 420), or the distribution of a prospectus marked "strictly private and confidential" among friends of the promoters of the company (*Sherwell v. Combined Incandescent Mantles Syndicate*), have been held not to be an offer to the public, and therefore not within the meaning of the Act. In practice it is better to head a draft prospectus, or a circular issued on behalf of a private company, "*This memorandum is not a prospectus within the meaning of Section 285 of the Act, and is only issued for circulation among the personal friends of the directors.*"

It has become a common practice to publish in newspapers an abridged prospectus, in order to save the cost of advertising, and there does not appear to be any legal objection to this course, provided there is a footnote stating that a full prospectus and form of application



may be obtained at some specified place. If, however, a form of application be attached to the abridged prospectus, any person applying for shares on the faith of the statement contained in such document would, it is thought, have a right of action in the event of certain disclosures required by Section 81 of the Act being omitted.

By Section 82 a company other than a private company which does not issue a prospectus must file with the Registrar of Joint Stock Companies a statement in lieu of prospectus, signed by every person who is named therein as a director or proposed director, or by his agent authorised in writing. The following is the form of statement required :—



A 5s.  
Companies  
Registration  
Fee Stamp  
must be  
impressed here

## COMPANIES (CONSOLIDATION)

STATEMENT IN LIEU

The nominal share capital  
of the Company .. ..

£

Divided into .. ..

Shares of £ each.

"

"

"

"

Names, descriptions and  
addresses of directors or  
proposed directors

Minimum Subscription (if  
any) fixed by the Memo-  
randum or Articles of Associa-  
tion on which the Company  
may proceed to allotment ..

Reserved for binding.

ACT, 1908.

Limited.

## OF PROSPECTUS.

Number and amount of shares and debentures agreed to be issued as fully or partly paid up otherwise than in cash.

The consideration for the intended issue of those shares and debentures .. ..

Names and addresses of (a) vendors of property purchased or acquired, or proposed to be (b) purchased acquired by the Company ..

Amount (in cash, shares, or debentures) payable to each separate vendor ..

1. Shares of £ fully paid.
2. Shares upon which £ per share credited as paid
3. Debentures £
4. Consideration.

(a) For definition of Vendor, see Section 81 (2) of the Companies (Consolidation) Act, 1908.

(b) See Section 81 (3) of the Companies (Consolidation) Act, 1908.

*continued.*

## COMPANIES (CONSOLIDATION)

## STATEMENT IN LIEU

Amount (if any) paid or payable (in cash or shares or debentures) for any such property, specifying amount (if any) paid or payable for goodwill.	<p>Total purchase price £</p> <p>Cash..... £</p> <p>Shares..... £</p> <p>Debentures.. £</p> <hr/> <p>Goodwill.... £</p> <hr/>
Amount (if any) paid or payable as commission for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares or debentures in the Company, or	<p>Amount paid</p> <p>„ payable</p>
Rate of the commission ..	Rate per cent.
Estimated amount of preliminary expenses .. ..	£
Amount paid or intended to be paid to any promoter ..	<p>Name of promoter</p> <p>Amount £</p> <p>Consideration :—</p>
Consideration for the payment .. .. .	

Reserved for binding.

ACT, 1908.

Limited.

OF PROSPECTUS—(continued).

Dates of, and parties to,  
every material contract (other  
than contracts entered into  
in the ordinary course of the  
business intended to be  
carried on by the Company  
or entered into more than  
two years before the filing  
of this statement)

Time and place at which  
the contracts or copies there-  
of may be inspected.. ..

Names and addresses of  
the Auditors of the Company  
(if any)

*continued.*

## COMPANIES (CONSOLIDATION)

## STATEMENT IN LIEU

Full particulars of the nature and extent of the interest of every director in the promotion of or in the property proposed to be acquired by the Company, or where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares, or otherwise, by any person either to induce him to become, or to qualify him as, a director, or otherwise for services rendered by him or by the firm in connection with the promotion or formation of the Company.. ..

ACT, 1908.

Limited.

OF PROSPECTUS—(continued).

Reserved for binding

Whether the Articles contain any provisions precluding holders of shares or debentures receiving and inspecting balance sheets or reports of the auditors or other reports.. ..

Nature of the provisions

Signatures of the persons above-named as directors or proposed directors, or of their agents authorised in writing.

\_\_\_\_\_

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*Effect of Misrepresentation in Prospectus.*

It is most essential that in a prospectus there be no misstatements or concealment of material facts, as—

- (1) An allotment of shares may be set aside for fraud or misrepresentation.
- (2) Damages or compensation may be claimed from those who have issued or who are responsible for the issue of the prospectus.

In *Re New Brunswick and Canada Rail Co. v. Muggeridge* (1 Dr. & Sm. 381) it was stated—

“Those who issue a prospectus holding out to the public the great advantages that will accrue to persons who will take shares in a proposed undertaking, and inviting them to take shares on the faith of the representations therein contained, are bound to state everything with strict and scrupulous accuracy, and not only to abstain from stating as fact that which is not so, but to omit no one fact within their knowledge, the existence of which might in any degree affect the nature or extent or quality of the privileges and advantages which the prospectus holds out as inducements to take shares.”

If a prospectus contain a misrepresentation upon which a person claims to have his name removed from the register, he must show that the statement was material, and that he relied thereon in applying for the shares. If he succeed, he is entitled to have the amount which he has paid on the shares refunded to him, with



interest at the rate of 4 per cent. per annum from the date of payment. He must, however, seek relief within a reasonable time after discovering the fraud, and before the company has gone into liquidation. A purchaser as distinct from an original allottee is not entitled to relief, unless the prospectus has been issued not only to induce applications for shares, but also to induce persons to whom it is sent to purchase shares in the open market.

In addition to a right of rescission a person who has been induced to take shares by an untrue statement in the prospectus has a right of action for damages against those responsible for the issue of the prospectus, under Section 84, unless any such director or other person can show—

- (1) That he had reasonable grounds for believing the statement to be true; or
- (2) That he made the statement upon the authority of an expert whom he had reasonable grounds for believing to be competent; or
- (3) That the statement was a correct copy of an official document;

or unless he can prove—

- (1) That, having consented to become a director, he withdrew his consent before the issue of the prospectus and it was issued without his authority or consent; or
- (2) That the prospectus was issued without his authority or consent, and that on becoming aware of its issue he gave public notice of such fact; or

- (3) That after issue and before allotment, on becoming aware of any untrue statement, he withdrew his consent thereto, and gave public notice of his withdrawal and the reason for so doing.

The measure of damages is the difference between the price paid for the shares and their real value at the time of allotment. Proceedings against directors and others must be brought within six years after the date when the shares were allotted.

An action may be brought to recover damages from directors or promoters, &c., although the company is in liquidation, but the aggrieved shareholder must show—

- (1) That the misstatement was made by the persons sought to be charged.
- (2) That it was material.
- (3) That such person relied on such statement and was induced thereby to take the shares.
- (4) That damage has actually been suffered.

Directors, and others, who are called upon to pay damages under Section 84 have a right of contribution from others who are equally liable with them for the issue of the prospectus.

A contract to take shares is governed by the same rules as other contracts, and therefore any person induced by fraud to become a member may rescind the contract and have his name struck off the register.

The Larceny Act, 1861, Section 84, enacts that whosoever being a director, manager, or public officer of any body corporate or public company, shall make, circulate, or publish, or concur in making, circulating, or publishing any written statement or account which he shall know to be false in any material particular, with intent to deceive or defraud any member, shareholder, or creditor of such body corporate or public company, or with intent to induce any person to become a shareholder or partner therein, or to entrust or advance any property to such body corporate or public company, or to enter into any security for the benefit thereof, shall be liable at the discretion of the Court to penal servitude for not more than seven nor less than three years, or to imprisonment with or without hard labour for a term not exceeding two years.

Section 281 of the Companies (Consolidation) Act, 1908, which replaces Section 28 of the Companies Act, 1900, also imposes penalties for false statements. (*Vide* p. 153.)

The company itself likewise has a right of action against the promoters or vendors for misrepresentation which resulted in the purchase of the property. As regards the vendor, if the purchase has not been completed, whether the representations were made innocently or fraudulently, rescission can be obtained, but, if completed, the contract can only be rescinded in the case of fraud, the remedy otherwise being an action for deceit or for breach of warranty.

### Advertising.

The question of advertising will generally be settled by the promoters, subject to the approval of the proposed directors at a preliminary meeting held before the issue.

The amount expended will depend on the size of the company and the nature of the issue, but as a rule an outlay of £1,500 to £2,000 will allow sufficient advertising for a couple of days of a prospectus of average length.

The best method is to arrange for a good firm of advertising agents to give an estimate of what they consider necessary, and to let them carry out the matter.

In the same way some addressing agency will be entrusted with the addressing of the prospectuses to persons whose names appear on specially prepared lists containing investors in companies of a similar nature.

The actual printing of the prospectus is a small matter, but one which requires careful attention, as, apart from the risk of clerical errors, the general style and get up may make considerable difference to the success of the issue, for, be it always remembered, 90 per cent. of the prospectuses issued find an early resting-place—in the waste-paper basket.

To avoid trouble, it is always desirable to arrange that the prospectuses required for brokers, accountants, &c., should be sent *unfolded*, to facilitate stamping.

## CHAPTER VIII.

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**Directors.**

The first directors are usually appointed by the articles, although sometimes the appointment is made by the subscribers to the memorandum.

If the first directors are appointed by the articles, or named in any prospectus or statement in lieu of prospectus, as directors or proposed directors, each must, before the registration of the articles or publication of the prospectus, or the filing of the statement in lieu of prospectus, in compliance with Section 72 of the Act—

- (1) Sign and file with the Registrar a consent in writing to act as such director.
- (2) Either sign the memorandum for a number of shares, not less than his qualification (if any), or sign and file with the Registrar a contract in writing to take from the company and pay for such qualification shares.

Should a director be unable to sign himself, an agent, authorised in writing, may act on his behalf.

On application for registration a list has to be delivered to the Registrar of all persons who have consented to become directors; the penalty for including thereon the name of any person who has not so consented being £50.

The provisions of Section 72 do not apply to a prospectus issued by or on behalf of a company after the expiration of one year from the date at which it is entitled to commence business.

Although the Act does not require a director to hold any qualification shares, if the articles fix some qualification the shares must, in the case of directors named in the articles or prospectus, be taken direct from the company, and, in the case of directors otherwise appointed, be acquired within two months of appointment (or such shorter time as may be fixed by the articles), otherwise the office is vacated; the penalty for acting as director when not qualified so to do being a fine of £5 per day (Section 73).

The shares need not be paid for in cash, payment by some consideration other than cash being good. (*Dent's case*, 1873, 8 Ch. 768.)

It should also be noted that, by Section 87, the company cannot obtain the certificate to commence business until each director has taken up his qualification shares and paid up thereon the same proportion on application and allotment as other subscribers.

If a director take his qualification shares as a present from the promoter, this is a breach of trust, and in the event of liquidation he is liable for the amount so received (*Hay's case* (1875), 10 Ch. 593); so also, where an arrangement was made for a promoter to take back a director's qualification shares at par (*Archer's case* (1892) 1 Ch. 322) and the promoter did so, the shares being of no value.

Directors are not entitled to remuneration *virtute officii*. It is usually fixed, however, by the articles, in which case a director may sue for his fees or prove as an unsecured creditor on the liquidation of the company. (*New British Iron Co.*; *ex parte Beckwith* (1898), 1 Ch. 324.) But if not fixed by the articles, but by the company in general meeting, he would, in the event of liquidation, be a *deferred* creditor. (*Leicester Club Co.* (1885), 30 C.D. 629.) A director who acts without acquiring his qualification is entitled to his remuneration. (*Salton v. New Beeston Cycle Co.* (1899), 1 Ch. 775.)

Unless the articles so provide, a director is not entitled to his fees "free of income tax," nor to the expenses of attending board meetings, unless sanctioned by the company in general meeting.

If the articles provide, or a resolution passed in pursuance thereof states, that the directors are to be remunerated *at the rate of* a certain amount per year, such remuneration is apportionable (*Salton v. New Beeston Cycle Co.* (1899), 1 Ch. 775); otherwise, if only entitled to a *fixed sum per annum*, directors cannot claim for services rendered during part of a year (*Inman v. Ackroyd & Best, Lim.* (1901), 1 K.B. 613).

If a director is a trustee of his qualification shares, as, for instance, where he represents a company on the board of a subsidiary company, he is entitled to retain the remuneration for himself as payment for work done. (*Re Dover Coal Field, Lim.* (1908), 1 Ch. 65.)

The quorum of directors who may transact the business of the company is usually fixed by the articles, but, if not so fixed, the number of directors who usually act will be sufficient, although notice of the meeting must be given to all the directors.

If, however, certain directors are prohibited from voting in accordance with a clause in the articles which disqualifies those interested in contracts with the company from voting thereon, such directors will not count in calculating the quorum necessary for the transaction of business. (*Re Greymouth-Point Elizabeth Railway and Coal Co.* (1904), 1 Ch. 32.)

A director becomes disqualified if he lose his qualification, or does any act which, by the articles of association, amounts to disqualification, as, for example, where he becomes bankrupt, or compounds with his creditors, or becomes lunatic, or absents himself from meetings of the board for a stipulated period without leave.

By Section 74, however, the acts of a director are valid, notwithstanding any defect that may subsequently be discovered in his appointment or qualification.

A director can only be removed in the manner prescribed by the articles, although, if there is no such power, the company may obtain same by special resolution.

Neither can a director resign unless the articles so provide or the resignation is accepted by the company in general meeting.



The powers of directors are limited by the articles of association, but the shareholders may ratify acts done by the directors, although *ultra vires*, if such acts are *intra vires* the company.

Directors may not delegate their powers unless expressly sanctioned by the articles, neither may they contract with the company except where it is specially provided that they may, under certain conditions, be interested in contracts with the company.

The position of directors is that both of trustee and agent.

They are trustees for the company of their *power* of allotting shares, making calls, and approving transfers, but cannot be regarded as trustees of the property of the company in the same way as ordinary trustees. Their position is more that of agents, and they are not personally liable on contracts entered into by them unless they contract in their own name.

In entering into contracts they must, however, indicate that they are purporting to act on behalf of the company. For example, a promissory note drawn by "A. B. and C. D., Directors of the X. Y. Z. Co., Lim.," would render the two directors personally liable thereon.

Like other agents, a director cannot make any secret profit out of his office, and is accountable to the company for any undisclosed benefit received by him, whether it take the form of a commission on the purchase-price from the vendor, qualification shares from the promoter, or a gift, present, or payment for services rendered.

If directors exercise the powers for which they are trustees otherwise than for the benefit of the company, they are liable for a breach of trust; for example, the funds of a company are only applicable for specific purposes, and thus partake of the nature of a trust fund, so that to apply such funds to purposes which are *ultra vires* the company amounts to a breach of trust.

They may, however, in the absence of fraud, claim the benefit of the Trustee Act, 1888, and the protection afforded by the Statutes of Limitation.

Directors are also bound to use fair and reasonable diligence in the discharge of their duties—that is to say, they are liable for negligence—but it is provided by Section 279 of the Companies (Consolidation) Act, 1908, that if in any proceeding against a director, or person occupying the position of director of a company, for negligence or breach of trust it appears to the Court hearing the case that the director or person is or may be liable in respect of the negligence or breach of trust, but has acted honestly and reasonably, and ought to be fairly excused for the negligence or breach of trust, that Court may relieve him either wholly or partly from his liability on such terms as the Court may think proper.

A director is not, however, liable for mistakes or errors of judgment, and although after his death his estate will be liable for breach of trust, it will not be liable for negligence unless the estate has benefited by the neglect.

If one of several directors has paid damages for misfeasance, his co-directors who are jointly implicated are liable for contribution. (*Ashurst v. Mason*, 1875; 20 Eq. 225.)

Directors are also liable for non-compliance with certain statutory requirements of the Companies (Consolidation) Act, 1908.

*Unlimited Liability of Directors.*

The memorandum of association as originally framed, or as altered by special resolution, may make the liability of its directors or managers unlimited, but on the election of any person as director his proposer must add to the proposal a statement that the liability of such person will be unlimited, and written notice to that effect must also be given to him before he accepts the appointment or acts as director.

## CHAPTER IX.

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PAYMENT OF INTEREST OUT OF CAPITAL—PURCHASE PRICE—  
PRELIMINARY EXPENSES—THE PRELIMINARY CONTRACT  
—COMMENCEMENT OF BUSINESS—PROFITS PRIOR TO  
INCORPORATION.

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### **Payment of Interest out of Capital.**

By Section 91 of the Companies (Consolidation) Act, 1908, where any shares of a company are issued for the purpose of raising money—

- (a) to defray the expenses of the construction of any works or buildings;
- (b) to provide any plant which cannot be made profitable for a lengthened period;

the company may pay interest on so much of such share capital as is, for the time being, paid up, and may charge the same to capital as part of the cost of construction of the works, plant, &c., provided that—

- (1) The payment of interest out of capital is authorised by the company's articles of association or by special resolution.

- (2) The sanction of the Board of Trade is obtained.

Before granting such sanction the Board of Trade may, at the expense of the company, appoint a person to inquire and report to them as to the circumstances of the case, and before making the appointment require the company to give security for costs.

- (3) The period during which interest is payable is fixed by the Board of Trade, and in no case must it extend beyond the close of the half-year next after the half-year during which the works or buildings have been completed or the plant provided.
- (4) The rate of interest must not exceed four per cent., and must not operate as a reduction of the amount paid-up on the shares in respect of which it is paid.

The accounts of the company must show the capital on which, and the rate at which, interest has been paid out of capital during the period to which the accounts relate.

Although in certain cases the advantages to be gained from the provisions of this section are of benefit, in many instances the trouble involved in obtaining the sanction of the Board of Trade is not justified by the results. The twentieth annual report by the Board of Trade on the winding-up of companies shows that, for the year ending 31st December 1910, only six applications were made under this section and that only three were granted.

### Purchase Price.

In determining the purchase price to be paid to the vendor the amount of capitalisation which the estimated profits will allow, together with the amount of working capital required, have to be taken into account. The vendor will usually require payment at par on the valuation of works, plant, stock, debtors, &c., the difference between such valuation and the total purchase price representing the goodwill. Although the goodwill may have been calculated on a proper number of years' purchase, it does not necessarily follow that the proposition is, even then, sufficiently attractive owing to the capital required.

For example—

The fixed assets of a business are valued at £80,000.

Stock, debtors, &c., £100,000.

The trade creditors amount to £50,000.

The profits for the past three years have averaged £10,000, and the vendor has fixed the purchase price at £160,000, the company to discharge the liabilities and take over the business as a going concern.

At present the concern has £50,000 working capital—viz., Stock, debtors, &c., £100,000, less creditors £50,000—and it is considered desirable that this working capital should be increased to £80,000.

The vendor agrees to take payment of £100,000 of the purchase price in ordinary shares.

The capital required is therefore as follows :—

	£
Vendor ... ..	160,000
Further Working Capital ... ..	30,000
Preliminary Expenses, Stamps, &c. ... say	10,000
	<u>£200,000</u>

to be raised by the issue of

100,000 £1 6 per cent. cumulative preference shares,  
100,000 £1 ordinary shares (to be allotted to vendor).

The average profits of the business amount only to £10,000, and as the preference share dividend would absorb £6,000, only £4,000 would remain for the ordinary shareholders, unless the additional working capital means increased profits.

If the capital is required to pay off creditors and reduce liabilities instead of for extension of trade, the profits would not be increased, and it is therefore doubtful whether the proposition would be sufficiently attractive to draw investors, the margin of profit being so small.

If, however, the vendor should agree to accept the whole of the purchase price in ordinary shares, only £2,400 would be required to pay 6 per cent. on the issue of 40,000 £1 preference shares, leaving sufficient profits in reserve to make the proposition worth consideration.

Generally it may be said that where the vendors attempt to obtain payment of the whole or the greater proportion of the purchase price in cash, the company

has little chance of success, particularly if a large payment for goodwill, patents, or other assets of an unrealisable nature are included, as the investing public are beginning to realise that large cash promotion profits usually mean small dividends, and, although willing that the promoter shall receive reasonable payment for his services, such remuneration must be in shares, the value of which is dependent on the success of the undertaking.

It is only fair to state that the financial papers have done much to educate the public in this direction, and to point out the weak spots, to which attention should be paid when considering whether a proposition is worth investment.

#### **Preliminary Expenses.**

The preliminary expenses of the company—that is to say, the expenses incidental to the promotion and formation of the company—include, *inter alia*:—

- (1) Stamp duties and fees on the memorandum and articles of association, including the duty on the nominal capital, and stamp duties on the contracts entered into by the company in connection with the acquisition of the assets.
- (2) Law costs in connection with the registration of the company, including the costs of the preparation of the memorandum and articles of association, contracts, and prospectus.
- (3) Accountants' charges for assistance rendered in the formation of the company.



- (4) Valuers' charges.
- (5) Printing the memorandum and articles of association, share certificates, Share Ledgers, &c.
- (6) Advertising and issue of the prospectus, including postages, envelopes, and addressing.
- (7) Brokers' fees.
- (8) Commission payable on shares allotted.
- (9) Cost of printing and stamping letters of allotment.
- (10) Any other expenditure directly incurred in connection with the formation of the company.

The amount paid or payable for underwriting, and any fee paid or payable to the promoter, must be shown separately.

The expenditure is usually spread over the term of three to five years, a proportionate amount being written off each year out of profits, any balance being shown in the meanwhile on the asset side of the Balance Sheet.

As already stated, a contract is frequently entered into on behalf of the company with a promoting syndicate, which undertakes to pay the whole amount of the preliminary expenses in consideration of a lump sum.

This method is often open to abuse, as the syndicate either makes a large profit out of the amount paid to it, or utilises the moneys coming to hand in this way for purposes of paying additional underwritten commission not disclosed in the prospectus.

It would be a useful alteration of the law if every company, in its prospectus, had not only to state the estimated amount of its preliminary expenses, but had in addition to group under distinctive headings the general nature of such expenditure.

### **The Preliminary Contract.**

As a company cannot enter into a binding contract until incorporated, a preliminary agreement is usually entered into between the vendor and some person who acts as agent or trustee for the company about to be formed. Nevertheless the company, when it comes into existence, is not bound by the contract, nor can it sue the vendor thereon; therefore it is desirable to provide in the contract that, if the company does not adopt the agreement within a certain period, either party may rescind the contract.

As soon as the company is incorporated it enters into a new agreement with the vendor to carry out the terms of the preliminary contract, and it is usual to make this one of the objects of the company or to include in the articles the following clause :—

*PRELIMINARY CONTRACT.—The company shall forthwith adopt the agreement dated . . . and made between . . . of the one part and . . . on behalf of this company of the other part, which has for the purpose of identification been initialled by . . . a solicitor of the High Court, and the directors shall carry the said agreement into effect with or without modification.*

**Commencement of Business.**

A company other than a private company cannot, in accordance with Section 87 of the Act, commence business nor exercise any borrowing powers unless—

- (a) Shares subject to the payment of whole amount in cash have been allotted to an amount not less than the minimum subscription.
- (b) Every director has paid to the company on each of the shares taken or agreed to be taken by him, and for which he is liable to pay in cash a proportion equal to the proportion payable on application and allotment on the shares offered for public subscription.
- (c) There has been filed with the Registrar of Joint Stock Companies a statutory declaration by the secretary or one of the directors that the above conditions have been complied with.
- (d) In the case of companies not issuing a prospectus there has been filed with the Registrar a statement in lieu of prospectus.

On the statutory declaration being filed, the Registrar will issue a certificate certifying that the company is entitled to commence business.

The penalty for contravention of this section is £50 per day on every person responsible therefor.

It should be noted that the restriction on the commencement of business applies to all contracts, whether for preliminary expenses or otherwise, and the company will not be bound by any contract which it has entered

into unless and until it is entitled to commence business. (*Otto Electrical Manufacturing Co.* (1906), 2 Ch. 390.) The mere fact that a promoter pays the expenses and fees on incorporation does not of itself entitle him to recover them from the company. (*National Motor Mail Coach Co.* (1908), 2 Ch. 515.)

By Clause 4 of the section it is expressly provided that shares and debentures may be simultaneously offered for subscription and allotment, and that money payable on application for debentures may be received, although no borrowing powers can be exercised until the company is entitled to commence business.

By Section 105 a contract to take debentures may be enforced by an order for specific performance.

### **Profits Prior to Incorporation.**

If a company take over a business from a date prior to the date of incorporation, any profits earned between such dates are not available for dividend, but must be appropriated firstly in payment of any interest on the purchase price due to the vendor at the time of incorporation, and any balance utilised for the purpose of writing down the goodwill or fixed assets.

As stock will not usually be taken, nor the books closed, at the date of the incorporation, it becomes necessary to apportion the profits for the whole year when ascertained, the apportionment being made as follows :—

- (a) Ascertain the turnover from the date the business is taken over to the date of incorporation.

- (b) Apportion the gross profit according to the ratio the turnover for such period bears to the turnover for the whole year.
- (c) Apportion the fixed or establishment charges according to time.
- (d) The balance of the apportioned gross profit, less the proportion of fixed charges, equals the apportioned profit prior to incorporation.

*Illustration.—*

A company incorporated 1st May 1912 takes over a business as at 1st January 1912.

The turnover for the year is £100,000, the proportion to 1st May 1912 being £50,000.

The gross profit for the year is £10,000, and the fixed charges £3,600.

The profits are apportioned as follows :—

	Proportion to 1st May 1912	Proportion from 1st May to 31st Dec. 1912
GROSS PROFIT, <u>£10,000</u>		
From 1st January to 1st May $\frac{50,000}{100,000}$ ..	£ 5,000	£
From 1st May to 31st December $\frac{50,000}{100,000}$ ..	..	5,000
Deduct Fixed Charges, £4,000		
From 1st January to 1st May (4 months) $\frac{4}{12}$ of £3,600 .. ..	1,200	
From 1st May to 31st December (8 months) $\frac{8}{12}$ of £3,600 .. ..	..	2,400
Balance, being apportionment of net Trading Profit of £6,400 .. ..	<u>£3,800</u>	<u>£2,600</u>

Against the £2,600 would be chargeable the whole of the directors' fees, depreciation for eight months, and any charges incurred by the company not chargeable against the old business.

The dividends would be calculated from the date the calls were paid, unless otherwise provided by the articles.

CHAPTER X.

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**Meetings and Proceedings.**

By Section 64 of the Act a general meeting of every company must be held once at least in every calendar year, and not more than fifteen months after the holding of the last preceding general meeting. The first general meeting is called the statutory meeting, and this must be held within a period of not less than one month nor more than three months from the date at which the company is entitled to commence business. This statutory general meeting is a general meeting within the meaning of Section 64 of the Act, provided it is not held later than the 31st day of December in the year of incorporation, but it is not an ordinary general meeting within the meaning of Section 26 of the Act, so that it is not necessary to file thereafter the annual list of shareholders.

*Statutory General Meetings.*

Seven days before this meeting the directors must forward to the members of the company a report called the "statutory report," certified by not less than two directors, and by the auditors, in so far as the report relates to the shares allotted by the company, the cash received in respect of such shares, and receipts and payments on Capital Account.

This statutory report must show—

- (1) The total number of shares allotted, distinguishing shares allotted as fully or partly paid up otherwise than in cash, and stating in the case of shares partly paid up the extent to which they are so paid up, and in either case the consideration for which they have been allotted.
- (2) The total amount of cash received by the company in respect of all the shares allotted, distinguished as aforesaid.
- (3) An abstract of the receipts of the company on account of its capital, whether from shares or debentures, and of the payments made thereout up to a date within seven days of the date of the report, exhibiting under distinctive headings the receipts of the company from shares and debentures and other sources, the payments made thereout, and particulars concerning the balance remaining in hand, and an account or estimate of the preliminary expenses of the company.
- (4) The names, addresses, and descriptions of the directors, auditors (if any), managers (if any), and secretary of the company.
- (5) The particulars of any contract the modification of which is to be submitted to the meeting for its approval, together with particulars of the modification or proposed modification.



## THE X. Y. Z. COMPANY, LIMITED.

## STATUTORY REPORT.

*Pursuant to Section 65 of the Companies (Consolidation) Act, 1908.*

The directors beg to report as follows:—

(1) The total number of shares allotted is:

200,000 Preference Shares of £1 each,

100,000 Ordinary Shares of £1 each,

of which 50,000 preference shares and 100,000 ordinary shares have been allotted as fully paid in part consideration of the purchase-price.

(2) The total amount received by the company in respect of the shares issued wholly for cash is £64,825.

(3) The receipts and payments of the company on Capital Account to the date of this report are as follows:—

PARTICULARS OF RECEIPTS				PARTICULARS OF PAYMENTS			
	£	s	d		£	s	d
Amount received to date on 150,000 Preference Shares allotted for cash ..	64,825	0	0	Payments on account of Purchase Consideration ..	26,554	12	8
				Payments on account of Preliminary Expenses ..	4,054	4	9
				Balance at Bankers	34,216	2	7
	<u>£64,825</u>	<u>0</u>	<u>0</u>		<u>£64,825</u>	<u>0</u>	<u>0</u>

(4) The following is an estimate of the preliminary expenses of the company, £5,000.

(5) The names, addresses, and descriptions of the directors, auditors, and secretary of the company are as follows:—

## Directors.

A. B.

C. D.

E. F.

G. H.

*Auditors.*

F. W. &amp; Co., Chartered Accountants.

*Secretary.*

L. M.

We, the undersigned directors of the above-named company, certify that the above report is correct.

A. B. {  
E. F. { *Directors.*

We hereby certify that so much of this report as relates to the shares allotted by the company and to the cash received in respect of such shares, and to receipts and payments of the company on Capital Account, is correct.

F. W. &amp; Co.,

Chartered Accountants,

20th March 1912.

*Auditors.*

A copy has to be filed with the Registrar of Joint Stock Companies.

At the meeting a list showing the names, descriptions, and addresses of the members, and number of shares held by each, has to be produced and to remain open and accessible to any member during the continuance of the meeting. The members present may discuss any matter relating to the formation of the company, or arising out of the report. If default is made in holding the meeting the shareholders may, on the expiration of fourteen days from the last day on which the meeting ought to have been held, present a petition for the winding up of the company.

*Extraordinary General Meetings.*

An extraordinary general meeting of the company must, in accordance with Section 66, be convened on the requisition of holders of not less than one-tenth of

the issued share capital of the company upon which all calls or other sums due have been paid, and if not held within twenty-one days from the date of the requisition the requisitionists, or a majority of them in value, may themselves convene a meeting.

The requisition must state the objects of the meeting, and must be signed by the requisitionists, and be deposited at the registered office of the company. It may consist of several documents in like form, each signed by one or more requisitionists. On receipt of such requisition the secretary of the company must obtain the sanction of the directors before convening the meeting (*State of Wyoming Syndicate* (1901), 2 Ch. 431), and in the case of joint holders all must sign the requisition.

#### *Other Meetings and Votes.*

Subject to any regulations in the articles to the contrary, by Section 67—

- (i) A meeting of a company may be called by seven days' notice in writing served on every member in manner in which notices are required to be served by Table A in the First Schedule to the Act.
- (ii) Five members may call a meeting.
- (iii) Any person elected by the members present at a meeting may be chairman.
- (iv) Every member shall have one vote.

*Proxies.*

Clause 64 of Table A provides that, on a poll, votes may be given either personally or by proxy, and most articles of association contain a similar provision. Under Table A only members of the company entitled to vote are eligible to act as proxies, and the forms of proxy must be deposited at the registered office of the company at least 48 hours before the time for holding the meeting.

Each proxy must be stamped before execution with a penny stamp (Stamp Act, 1891), unless executed abroad; and if to be used at more than one meeting must bear a ten shilling stamp.

The rights of shareholders to vote by proxy, and the regulations governing their use, are, however, entirely dependent on the articles of association.

*Resolutions.*

The resolutions used may be either Ordinary, Special, or Extraordinary.

An *ordinary* resolution is a simple numerical majority of those present at a meeting and voting.

An *extraordinary* resolution is one passed by not less than three-fourths of the members entitled to vote present personally or by proxy, at a meeting of which notice specifying the intention to propose the resolution as an *extraordinary resolution* has been given.

A *special* resolution is one that is—

- (1) Passed in the manner required for passing an extraordinary resolution.

- (2) Confirmed by a majority of such members entitled to vote as are present in person or proxy at a subsequent meeting held not less than fourteen *clear* days nor more than one month from the date of the first meeting.

Frequently, in order to save unnecessary trouble, the meetings are convened by one notice, but unless the articles provide otherwise, notice of the second meeting must be unconditional and not dependent on the resolution of the first meeting being passed.

The powers of the members of the confirmatory meeting are merely to confirm or reject the resolutions passed by the prior meeting, and the wording of the resolution cannot be altered.

*Special resolutions* are required in the following cases :—

Section 8.—To change the name of the company.

- „ 9.—To alter the objects clause of the memorandum of association.
- „ 13.—To alter the articles of association.
- „ 40.—To take power to return accumulated profits, in reduction of the paid-up share capital.
- „ 41.—To subdivide the shares of the company into shares of a smaller denomination.
- „ 46.—To reduce the capital.
- „ 59.—To resolve that a portion of the share capital shall only be called up in the event of the winding-up of the company.

Section 61.—To make the liability of directors unlimited.

„ 110.—To appoint inspectors to investigate the affairs of the company.

„ 129.—To resolve that the company be wound-up by the Court.

„ 182.—To resolve that the company be wound-up voluntarily, when voluntary liquidation cannot be effected in any other way.

„ 192.—To approve the sale of the assets of a company proposed to be, or in, voluntary liquidation, in consideration of shares or other interests in another company.

An *extraordinary resolution* is required :—

1. Section 182.—To wind-up a company voluntarily, when the notice convening the meeting states that it cannot, by reason of its liabilities, continue its business.
2. Section 190.—In voluntary liquidation to delegate to the creditors power of appointing liquidators.
3. Section 191.—To sanction an arrangement between a company and its creditors, where the company is, or is about to be, wound-up voluntarily.
4. Section 214.—In the case of a voluntary winding-up to sanction a general scheme of liquidation.

Extraordinary and special resolutions must be printed, and a copy forwarded within fifteen days after the passing of the extraordinary, or confirmation of the special, resolution to the Registrar of Joint Stock Companies.

A copy of every special resolution must also be attached to each copy of the articles issued after the confirmation of the resolution.

A practical point applying to all resolutions at meetings of companies, often overlooked by those not familiar with company procedure, is that neither a resolution nor an amendment requires a seconder, although such a course is usual and desirable.

Unless a poll is demanded the declaration by the chairman that an extraordinary or special resolution is carried is *conclusive* evidence of the fact, without proof of the number or proportion of the votes recorded for or against the resolution.

A poll may be demanded by any *three* persons entitled to vote at the meeting, unless the articles specify the number of persons who can demand a poll, which number must not exceed *five*.

The persons demanding a poll need not be members, those "entitled to vote," including, if so authorised by the articles of association, proxies, persons entitled to shares by reason of the death or bankruptcy of a member, bearers of share warrants, &c.

## CHAPTER XI.

### Statutory Requirements.

It may be convenient to here set out in summary form, for the purpose of reference, the various statutory requirements as regards public companies under the Companies (Consolidation) Act, 1908.

1. Forward to the Registrar printed copy of memorandum and articles of association (Section 15), duly signed by each subscriber, and stamped and witnessed (Sections 6 and 12), together with statement of nominal capital and statutory declaration. Pay fees on registration.

(The terms of the memorandum must not be altered except in the manner prescribed by the Act, *vide* Sections 7, 8, 9, 41, 45, 46 to 55, and 59.)

2. Fix name outside registered office, and have same legibly engraven on seal and used in all notices and on all official documents, including cheques, &c. (Section 63.)
3. Supply copies of memorandum and articles of association to members, if so required, on payment of fees not exceeding 1s. (Section 18.)
4. Keep following books :—
  - (1) Register of Members (Section 25).
  - (2) Register of Mortgages (Section 100).



(3) Register of Directors and Managers (Section 75).

(4) Minute Book (Section 71).

(5) Annual List and Summary (Section 26).

5. As regards Register of Members—

(1) Allow members and other persons to inspect same subject to restrictions (Section 30).

(2) Keep Trusts off Register (Section 27).

(3) Close Register (if required) for period not exceeding 30 days (Section 31).

(4) Give notice to Registrar of situation of any office where Colonial Register kept (Section 34).

(5) Comply with provisions of Section 37 on issue of share warrants and strike out of Register name of person then entered therein.

6. Send to Registrar of Joint Stock Companies—

(1) Copy of Annual List and Summary after the first ordinary general meeting in each year (Section 26).

(2) Copy of Register of Directors and notification of any changes therein (Section 75).

(3) Return of allotments within one month (Section 88).

- (4) Consent of director to act and contract to take qualification shares (Section 72).
- (5) Copy of prospectus, signed by every person named as director or proposed director (Section 80).
- (6) Declaration of compliance with statutory requirements to obtain certificate to commence business (Section 87).
- (7) Notice of any consolidation or conversion of shares (Section 42).
- (8) Notice of any increase in capital within 15 days (Section 44).
- (9) Office copy of any order of Court sanctioning reorganisation of capital within seven days (Section 45).
- (10) Printed copy of all special or extraordinary resolutions within 15 days (Section 70).
- (11) Particulars of mortgages or charges as required by Section 93, within 21 days (Section 93).

(The certificate of registration must be endorsed on debenture (*vide* Section 93, Sub-section 6).)
- (12) Statement of commission paid on issue of shares (Section 89).
- (13) Notice of any change in the situation of the registered office (Section 62).

- (14) Notice of situation of office where Colonial register kept (Section 34).
  - (15) Copy of statutory report (Section 65).
7. Hold meetings of members :—
- (1) Statutory general meeting, not less than one month nor more than three months from date entitled to commence business (Section 65).
  - (2) General meetings once a year, with interval of not more than fifteen months between each (Section 64).
  - (3) When required by holders of one-tenth of issued capital (Section 66).
8. Print and embody all special resolutions in articles of association (Section 70).
9. See that directors obtain qualification shares (if any) within two months (Section 73).
10. See that minimum subscription has been obtained before allotment (Section 85).
11. Obtain certificate to commence business (Section 87).
12. See that specific requirements as to publication of prospectus are complied with (Section 81).
13. File statement in lieu of prospectus, if no prospectus issued (Section 82).
14. Obtain sanction of Board of Trade to payment of interest on capital during construction (Section 91).

15. Prepare and have ready for delivery certificates for shares or debentures within two months of allotment or registration (Section 92).
16. Keep at registered office copy of all charges, as required by Act (Section 93).
17. Allow creditors and members, and other persons on payment of sum not exceeding 1s., to inspect Register of Mortgages (Section 101).
18. Allow members and debenture-holders to inspect and have copies of debenture trust deed under certain conditions (Section 102).
19. If underwriting commission paid on allotment of shares, file same on statement in prescribed form, and show amount not written off in each Balance Sheet (Sections 89 and 90).
20. Appoint auditors (Section 112).
21. Keep number of members not less than seven (Section 115).
22. Register transfers (Section 28).
23. Contract on behalf of company in manner provided by Act (Section 76).
24. Have Balance Sheet signed by two directors, and read the auditors' report before the company in general meeting (Section 113).
25. Comply with the requirements of the articles of association (Section 14).

In practice, many of the matters above mentioned will be dealt with by the solicitors; indeed, once a company is incorporated there are few statutory requirements to which attention must be directed without the advice and assistance of the company's solicitor.

*Penalties for Non-compliance with Statutory Requirements.*

It may also be of use for reference purposes to state in tabular form some of the penalties to which the company itself, and its directors, secretary, and other officials, may render themselves liable on failure to comply with the requirements of the Companies (Consolidation) Act, 1908.

Section of Act	Reason for Penalty	Penalty (only imposed on directors or other officers in case they know, permit, or wilfully authorise default)
9	Neglect to deliver to Registrar documents on alteration of objects of company	£10 per day on company
18	Failure to send copy of Memorandum and Articles to member after his request	£5 per day on both company and directors, &c.
25	Failure to keep a Register of Members	£5 per day on both company and directors, &c.
26	Failure to forward to Registrar of Joint-Stock Companies a copy of the Annual List and Summary	£2 per day on both company and directors, &c.
30	For refusal to allow members and other persons to inspect the Register of Members	£1 per copy on both company and directors, &c.
41	Failure to alter Memorandum after alteration of capital	£5 per day on both company and directors, &c.
44	Failure to notify any increase in capital to the Registrar of Joint-Stock Companies	£1 per copy on both company and directors, &c.
45	Failure to file office copies of orders on the reorganisation of the capital	Resolution does not take effect till filed
52	For failure to amend printed copies of the Memorandum of Association after a reduction of capital	£1 per copy on both company and directors, &c.
54	Concealment of name of any creditor entitled to object to reduction	Misdemeanour
60	Failure to inform director whose liability is unlimited of the fact of proposing him for election	£100 on all persons making default
61	Do., after making liability of directors unlimited	£1 per copy on both company and directors, &c.
62	Failure to have a registered office or to notify any alteration in the situation thereof	£5 per day on company
63	(a) Neglect to affix the company's name to premises where business carried on, or (b) unauthorised use of seal, or omission of name in official notices, and on bills, &c.	(a) £5 per day on both company and directors, (b) £50 on directors, &c., and personal liability on contracts
64	Failure to hold general meetings	£50 on directors or other parties making default
70	Failure (a) to send to Registrar printed copy of any special or extraordinary resolution, or (b) to embody same in articles	(a) £2 per day on company and directors (b) £1 per copy on company and directors
73	Neglect of acting director to acquire share qualification within stipulated period	£5 per day
75	Failure to keep Register of Directors or Managers, or to notify the Registrar of any changes therein	£5 per day on both company and directors, &c.
80	Failure to file copy of Prospectus with Registrar before issue	£5 a day on every person knowingly a party to issue

Section of Act	Reason for Penalty	Penalty (only imposed on directors or other officers in case they know, permit, or wilfully authorise default)
87 88 92 93	Commencing business before obtaining certificate Failure to file a return of allotments within one month, together with contract in the event of consideration being other than cash Omission to issue certificates for shares or debentures within two months of allotment or transfer, unless otherwise agreed Neglect to register mortgages or charges under this section, or to refuse to allow creditors or members to inspect copies of instruments creating such charge	£50 a day on each person responsible £50 per day on directors, or other officers party to the default £5 per day on both company and directors, &c. Loan creditor—Security void against liquidator or creditors, Company and directors £50 per day and £100 fine on summary conviction ( <i>vide</i> Section 99) £50 on directors, &c. £5, and £2 per day on directors, &c., and under Section 102 on company also
100 101 & 102	Failure to keep a Register of Mortgages at the registered office of the company Refusal to allow inspection of the Register of Mortgages or Register of Debentures and trust deeds	£5 on person making default £50 on both company and directors, &c. Members jointly and severally liable for all debts contracted after six months
109 110 113 115	Failure to produce books or answer questions of Board of Trade Inspector Failure to produce books or answer questions of Inspector appointed by the company Neglect to comply with statutory requirements as to audit For carrying on business with less than minimum number of members	Two years' hard labour £50 on both company and officers, and £5 per day during time default continues
216 274	Destroying or falsifying books Non-compliance with requirements by company registered outside United Kingdom	Fine or imprisonment for two years, or, on summary conviction, four months with or without hard labour
281	Wilful mis-statement in any report, return, certificate, or Balance Sheet	£5 per day on persons carrying on the business
282	Improper use of word "Limited"	Fine of £50 on company and on the managing directors, secretary, or other principal officer
Stamp Act, 1891 Section I	Issue of Share Warrants not properly stamped	

## CHAPTER XII.

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### **Books to be Kept.**

The following statistical books must be kept by every limited company registered under the Companies (Consolidation) Act, 1908 :—

- (a) Register of Members (Section 25).
- (b) Register of Mortgages (Section 100).
- (c) Register of Directors and Managers (Section 75).
- (d) Annual List and Summary (Section 26).
- (e) Minute Book (Section 71).

In practice the following books are also usually required :—

- (a) Applications and Allotments Book.
- (b) Share Ledger.
- (c) Shareholders' Address Book and Debenture-holders' Address Book.
- (d) Debenture Ledger.
- (e) Calls Book.
- (f) Register of Transfers of both Shares and Debentures.
- (g) Dividends and Interests Book.
- (h) Seal Book.



- (i) Directors' Attendance Book.
- (j) Agreement Book.
- (k) Agenda Book.
- (l) Share Certificate Book.

*Register of Members.*

The following information must be entered in the Register of Members :—

- (1) The names, addressses, and occupations (if any), of the members of the company, with the addition, in the case of a company having a capital divided into shares, of a statement of the shares held by each member, distinguishing each share by its number; and of the amount paid or agreed to be considered as paid on the shares of each member.
- (2) The date at which the name of any person was entered in the register as a member.
- (3) The date at which any person ceased to be a member.

In practice it is usual to combine the Share Ledger and Register of Members, instead of having separate books for each.

SHARE LEDGER.  
THE X. Y. Z. COMPANY, LIMITED.

*Date of Entry as a Member.*

*Date of ceasing to be a Member.*

Name  
Address  
Description  
Dividend Instructions  
*[Left-hand side.]*

SHARES ACQUIRED				CASH PAYABLE ON SHARES			
Date of Entry in Register	Allotment or Transfer Number	Number of Shares	Distinctive Numbers From      To	Total Value of Shares held £   s   d	Date when Called	Description of Payment or No. of Call	Amount per Share £   s   d
				£   s   d			£   s   d

CASH PAID ON SHARES				SHARES TRANSFERRED				BALANCE		
Date when due	Date of Payment	Cash Book Folio	Amount £   s   d	Date Transfer Passed	Transfer Number	No. of Shares	Distinctive Numbers From      To	Total value of Shares Transferred £   s   d	Date	No. of Shares
			£   s   d					£   s   d		£   s   d

*[Right-hand side.]*

In the case of the death of a member, probate of his will or letters of administration must be produced, a note of such production being marked on the document.

The names and addresses of the executors should be entered in the Register of Members, and they should be requested to fill up the following form :—

LETTER TO BE SIGNED BY EXECUTORS.  
ADMINISTRATORS.

To the Secretary, ..... Date.....  
 .....COMPANY, LIMITED.

SIR,

I

We

of.....

of.....

of.....

the Executor(s) of the Estate and Effects of.....  
Administrator(s)

.....late of  
 .....the registered  
 holder of.....Shares.....numbered.....to.....in your Company  
 (who died on the.....day of.....19.....)

.....Probate  
 under or by virtue of Letters of Administration granted to me  
us  
 on the.....day of....., 19....., hereby subscribe  
my respective Signature(s). And we request you to enter our names  
our  
 on the Company's Register as Executors (or Administrators) of  
 .....deceased in respect of such Shares.

Yours faithfully,

Full Name.....

Usual Signature.....

Address.....

Description.....

Full Name.....

Usual Signature.....

Address.....

Description.....

Full Name.....

Usual Signature.....

Address.....

Description.....

Executors.  
 Administrators.

FOR OFFICE USE ONLY.

No.....

Registered Fo. ....

Date Probate received .....

Date returned .....

(Signed).....Secretary.

On the marriage of a female shareholder, a memorandum signed by her and witnessed by some responsible person, together with the marriage certificate, should be presented, and the fact recorded on the Register. In the same way a Trustee in Bankruptcy or a Receiver in Lunacy must produce an office copy of his appointment and a record of the fact entered on the Register.

By Section 37, Subsection 5, of the Companies (Consolidation) Act, 1908, if the company issues share warrants, in respect of any shares, the name of the person then entered on the Register of Members must be struck out, as if he has ceased to become a member; and the following particulars entered :—

- (1) The fact of the issue of the warrant.
- (2) A statement of the shares included in the warrant, distinguishing each share by its number.
- (3) The date of the issue of the warrant.

Share warrants can only be issued in respect of fully-paid shares, and the articles as originally framed or as altered by special resolution must authorise the issue.

By Section 1 of the Stamp Act, 1891, the amount of stamp duty on every share warrant is three times the amount of the *ad valorem* duty which would be chargeable on an ordinary transfer of such shares where the consideration was the nominal value.

In the case of a company transacting business in a colony, a Branch Register of members resident in that colony may be kept, if the company be so authorised by its articles of association as originally framed or altered by special resolution. (Sections 34 to 36.)

The following form should be filled up by members wishing to have their shares transferred to the Colonial Register :—



Transfers of shares registered in a Colonial Register are exempt from British stamp duty, unless executed in the United Kingdom, and on the death of any member so registered such shares are only liable to British death duties if the member was domiciled in this country.

The Register of Members must be kept at the registered office of the company and be open to the inspection of any member gratis, and to any other person on the payment of a sum not exceeding one shilling, and any person may obtain a copy on payment of a sum not exceeding sixpence for each hundred words or part thereof.

If the name of any person is without sufficient cause entered in or omitted from the Register, or any default or delay takes place in entering on the Register the fact that any person has ceased to be a member, the person aggrieved, or any member of the company or the company, may, by Section 32, apply to the Court to rectify the Register.

#### *Closing the Register.*

By Section 31 a company may, upon giving notice by advertisement in some newspaper circulating in the district in which the registered office of the company is situated, close the Register of Members for any period not exceeding in the whole *thirty* days in each year.

Provision is frequently made in the articles for the closing of the Transfer Books for a similar period.

The object is, of course, to facilitate the payment of dividends, it being usual to make the same payable to the holders registered at the date the dividend is declared.



*Register of Mortgages.*

By Section 100 of the Companies (Consolidation) Act, 1908, the following particulars must be entered on the Register of Mortgages :—

- (1) A short description of the property charged.
- (2) Amount of charge.

(3) Names of mortgagees or persons holding the charge; and in addition the dates on which the charges are given and removed should be inserted.

Every charge of whatever description should be entered on the Register of Mortgages, and failure to do so renders those defaulting liable to a fine of £50.

The Register of Mortgages to be kept by the company under Section 100 must not be confused with the Register of Mortgages kept by the Registrar of Joint Stock Companies in compliance with Section 93 of the Act.

Under the latter section certain charges are void against any creditor or the liquidator of the company, without prejudice, however, to any obligation to repay the money thus secured, unless filed with the Registrar within 21 days of creation.

Such charges are :—

- (1) A mortgage or charge for the purpose of securing an issue of debentures.
- (2) A mortgage or charge on uncalled capital.
- (3) A mortgage or charge which, if executed by a private individual, would require registration as a bill of sale.

(4) A mortgage or charge on land or any interest therein.

(5) A mortgage or charge on the book debts of the company.

(6) A floating charge on the undertaking or property of the company.

In the case of a series of debentures registration must be effected within 21 days after the execution of the trust deed containing the charge, or, if there is no trust deed, after the execution of the first debentures of the series, and the following particulars given to the Registrar, together with the deed, or, if no deed, one of the debentures of the series :—

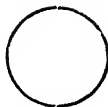
- (1) The total amount secured by the whole series.
- (2) The dates of the resolutions authorising the issue and the date of the covering deed (if any).
- (3) A general description of the property charged.
- (4) The names of the trustees (if any).

If more than one issue is made of any particular series the Registrar must be notified of the date and amount of each issue.

Certificate No. \_\_\_\_\_

THE COMPANIES (CONSOLIDATION) ACT, 1908.

\_\_\_\_\_



PARTICULARS to be delivered to the Registrar pursuant to Section 93  
(3) of the Companies (Consolidation) Act, 1908 (8 Edwd. VII., c. 69),  
relating to a series of Debentures containing, or giving by reference to  
any other instrument, any charge, to the benefit of which the debenture-  
holders of the said series are entitled *pari passu*, created by the \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_. Limited.

NOTE.—The Deed, if any, containing the charge must be delivered with these particulars to the Registrar within 21 days after the execution of such Deed; or, if there is no such Deed, one of the Debentures of the series must be so delivered within 21 days after the execution of any Debentures of the series.

PARTICULARS to be delivered to the Registrar pursuant to S. 93 (3) of the  
by \_\_\_\_\_

(1)	(2)	(3)	(4)
Total amount secured by the whole series	Amount of the present issue of the series	Dates of Resolu- tions authorising the issue of the series	Date of the Covering Deed (if any) by which the security is created or defined; or, if there is no such Deed, the date of the execution of the Debentures of the series

This Margin to be reserved for Binding.

Companies (Consolidation) Act, 1908, of a series of Debentures created  
Limited.

This Margin to be reserved for Binding.

(5)	(6)	(7)
GENERAL Description of the Property charged	Names of the Trustees (if any) for the Debenture- holders	Amount or rate per cent. of the Commission, Allowance or Discount (if any) paid or made either directly or in- directly by the Company to any person in consideration of his subscribing or agree- ing to subscribe, whether absolutely or conditionally, or procuring or agreeing to procure subscriptions, whether absolute or con- ditional, for any of the Debentures included in this Return

Signature \_\_\_\_\_

Designation of  
position in  
relation to the  
Company ) \_\_\_\_\_

Date \_\_\_\_\_

Section 93 (3) of the Companies (Consolidation) Act, 1908, provides that :—

Where a series of debentures containing, or giving by reference to any other instrument, any charge to the benefit of which the debenture-holders of that series are entitled *pari passu* is created by a company, it shall be sufficient if there are delivered to or received by the Registrar within twenty-one days after the execution of the deed containing the charge, or, if there is no such deed, after the execution of any debentures of the series the following particulars :—

- (a) The total amount secured by the whole series; and
- (b) The dates of the resolutions authorising the issue of the series and the date of the covering deed, if any, by which the security is created or defined; and
- (c) A general description of the property charged; and
- (d) The names of the trustees, if any, for the debenture-holders; together with the deed containing the charge, or, if there is no such deed, one of the debentures of the series, and the Registrar shall, on payment of the prescribed fee, enter such particulars in the register;

Provided that, when more than one issue is made of debentures in the series, there shall be sent to the Registrar for entry on the register particulars of the

date and amount of each issue, but an omission to do this shall not affect the validity of the debentures issued.

The fees payable on the registration of these particulars are as follows :—

Where the amount of the whole series does not  
exceed £200      ...      ...      ...      ...      10s.

Where the amount of the whole series exceeds  
£200      ...      ...      ...      ...      ...      £1

A copy of every certificate of registration must be endorsed on every debenture or certificate for debenture stock issued by the company which is secured by such charge.

Section 94 gives power for the rectification of the register where non-registration has been due to inadvertence, or if the Court is of opinion that such rectification is just and equitable.

All charges of whatever description—whether fixed, floating, or equitable—must be entered on the Register of Mortgages kept by the company, and the register must be available for inspection at all reasonable times by any creditor or member of the company, and also, on payment of a fee to be fixed by the regulations, not exceeding 1s. for each inspection, by any member of the public.

Copies of instruments creating any mortgage or charge which requires registration must be kept at the registered office of the company, and be available for inspection at all reasonable times.

## REGISTER OF MORTGAGES.

No. of Entry	Date Entered on Register	Amount of Charge	Names of Mortgagees	Particulars of Property Charged	Date Charge Removed
		£ s d			



The *Register of Directors and Managers* must contain the names, addresses, and occupations of each director or manager of the company, and a copy has to be sent each year to the Registrar of Companies, with the Annual Return.

Any change in the directorate must be notified from time to time to the Registrar.

*Annual List and Summary Book.*

The *Annual List and Summary* is made up to the fourteenth day succeeding the day on which the ordinary general meeting (or, if there is more than one ordinary general meeting in each year, the first of such ordinary general meetings) is held, and contains a list of all persons who on that date are members of the company, giving the names, addresses, and occupation, and the number of shares held by each, and the names of those shareholders who have ceased to be members since the preparation of the last list, and the number of shares transferred by them.

Any shares transferred since the date of the last return by persons who are still members must also be indicated, and the date of registration of the transfer shown.

A summary must also be prepared showing the particulars given on the following form :—

"THE COMPANIES (CONSOLIDATION) ACT, 1908."

## FORM E.

As required by Part II of the Act (Section 26).

## SUMMARY OF SHARE CAPITAL AND SHARES OF

A. & CO., LIMITED, made up to the 15th day of March 1912

(Being the Fourteenth Day after the date of the First Ordinary General Meeting in 1910.)

[illegible]

\*Where there are Shares of different kinds or amounts (e.g., Preference and Ordinary, or £10 and £5), state the numbers and nominal values separately.  
 †Where various amounts have been called, or there are Shares of different kinds, state them separately.  
 ‡Include what has been received on forfeited, as well as on existing, Shares.  
 §State the aggregate number of Shares forfeited (if any).

THE RETURN MUST BE SIGNED, AT THE END, BY THE MANAGER OR SECRETARY OF THE COMPANY,

Presented for filing by.....

A copy of the Annual List and Summary must be filed within seven days of the fourteenth day above mentioned with the Registrar of Joint Stock Companies, accompanied by 5s. for filing fee.

There must also be attached to the return a statement, made up to such a date as is specified therein, in the form of a Balance Sheet, audited by the company's auditors, and containing a summary of its share capital, its liabilities and its assets, and how the values of the fixed assets have been arrived at, but this statement need not include a statement of profit and loss.

If share warrants to bearer have been issued, a summary showing the total issued and cancelled since the last return must be included.

The above particulars must be entered in the Annual List and Summary Book by the company, which is open to inspection in the same manner as the Register of Members.

If no general meeting is held during any calendar year the List and Summary must nevertheless be prepared, and a copy forwarded to the Registrar of Joint Stock Companies, it being usual in such cases to make up the same to the 31st December.

The *Minute Book* must contain, in compliance with Section 71, the records of proceedings and resolutions passed at meetings of directors, and also at shareholders' meetings, but in practice a separate book is used for each.

The book should be written up fully, and, to facilitate reference, it is advisable to have same indexed.

The greatest possible care should be exercised that all matters requiring the sanction of the board are recorded, and that such matters as the allotment and forfeiture of shares, appointment of officials, and other directions of a special character, are included.

*Register of Transfers.*—The details of shares transferred are entered herein. (See pp. 37 to 42.)



*Dividends and Interests Book.*—This book will be divided into three parts for—

- (1) Ordinary Shares.
- (2) Preference Shares.
- (3) Debenture Stock.

In the case of a first dividend the calculations which have to be made for dividends payable on amounts paid on different dates are somewhat intricate, and the ruling here given will illustrate the best way of listing the amounts due.

## THE X. Y. Z. COMPANY, LIMITED.

INTERIM DIVIDEND AT THE RATE OF SIX PER CENT. PER ANNUM (LESS INCOME TAX) ON THE PARTICIPATING  
CUMULATIVE PREFERENCE SHARES DECLARED AT A MEETING OF DIRECTORS HELD ON.....1912.

In respect of the period ended 31st December 1911.

*Left-hand side.*

Folio	NAME	No. of Shares	APPLICATION			ALLOTMENT		
			Amount Paid	Date of Payment	No. of days to 31st Dec. 1911	Amount Paid	Date of Payment	No. of days to 31st Dec. 1911
			£ s d			£ s d		

*Right-hand side.*

FINAL CALL				Total Amount of Dividend	Income Tax at 1/2 in the £	Net Amount of Dividend	No. of Warrant	Date Paid
Amount Paid	Date of Payment	No. of days to 31st Dec. 1911	Amount of Dividend					
£ s d			£ s d	£ s d	£ s d	£ s d		

*Seal Book.*—This book is ruled with columns recording the date and particulars of documents sealed, together with the initials of the persons signing the documents sealed on behalf of the company.

*Shareholders' Address Book.*—This book is only used in the case of large companies, and can be utilised as an index to the Share Ledger.

A convenient method in the case of large companies is to prepare a list of shareholders in a Loose Leaf Ledger, ruled as follows, the number of shares held by each member being periodically extracted :—





In this way the balancing of the Share Ledger is considerably facilitated and notices of meetings, dividend warrants are more easily prepared, as the sheets can be distributed among several clerks engaged on the work.

*Debenture Ledger.*—A convenient form of this Ledger is as under.

*Surname* *Address*  
*Christian Name* *Description*  
*Dr.* *Cr.*

STOCK TRANSFERRED				STOCK ACQUIRED		
Date of Transfer	Particulars of Stock Transferred		Amount £ s d	Date of Entry on Register	Particulars of Stock Acquired	
	No. of Transfer Deed	To Whom Transferred			No. of Allotment or Transfer Deed	From Whom Acquired
			£ s d			

## CHAPTER XIII.

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**Share Capital Accounts.**

The only entries to be made in the financial books regarding the share capital are those which record the amount of capital called up, and paid.

Separate Capital Accounts should be opened for each class of shares, and, on allotment, a Journal entry made *crediting* "Share Capital Account" and *debiting* "Sundry persons for amount due on shares allotted" with the amount called up.

Shares allotted for a consideration other than cash, *e.g.*, to vendors in part payment of purchase price, are credited to Share Capital Account, and debited direct to Vendors' (or other) Account.

The cash received by the bank for the amounts payable on application for the shares, and subsequently the cash received on allotment, is entered up in a separate Pass Book, and this Pass Book can, if desired, be used as a Cash Book instead of re-entering each item in a separate Share Capital Cash Book.

The various items are then posted to the credit of the shareholders' Cash Accounts in the Share Ledger (*vide* p. 120), and the daily totals entered to the debit of "Bank" in the General Cash Book, and passed to the credit of "Sundry persons for amount due on shares allotted."

The *Share Capital Account* thus shows the total amount called up on the shares allotted, the details of which are given in the Share Ledger; and

The *Sundry Persons for Amount due on Shares Allotted Account* shows the amount called up and received on such shares and any calls in arrear.

If the shares are issued at a premium the amount of premium would be debited to "Sundry Persons, &c., Account," and credited to "Premiums on Shares Account."

Although, unless the regulations of the company provide otherwise, such premiums are available for dividend, the preferable method is to transfer the amount received from this source to Reserve Fund.

They are frequently, however, utilised for writing down the value of the goodwill or fixed assets, and for writing off the preliminary expenses of the company.

#### *Forfeiture of Shares.*

Power must be given in the articles to forfeit shares, the provisions of Table A usually being adopted. It should not be overlooked that directors have not any statutory right to forfeit shares apart from the powers conferred by the articles.

The forfeiture must be strictly made in accordance with the articles, after proper notice has been given to the defaulting shareholder to pay the calls in arrear, with any interest or expenses, on a certain specified date.

The following specimen notices show the usual form sent to shareholders whose calls are in arrear and after forfeiture :—

A. B. C. COMPANY, LIMITED.

---

DEAR SIR OR MADAM,

FIRST CALL.

I am instructed by my Directors to remind you that you have not yet paid the sum of £ : : due on the ..... instant in respect of the First Call of ..... per Share on the ..... Shares registered in your name, and to request *you to remit the amount forthwith to The Dogger Bank, Limited, with your Call Notice.*

Yours faithfully,

A. SCRIBE,  
*Secretary.*

To.....

.....

---

A. B. C. COMPANY, LIMITED.

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SIR OR MADAM,

With reference to my letter of the ..... , I have now to inform you that, in accordance with Sections —, —, —, and — of the Company's Articles of Association, a Meeting of Directors will be held on the expiration of fourteen days from this date, when the Shares allotted to you on which the Call remains unpaid will be forfeited, in accordance with the terms of such Sections, unless in the meantime *you remit the amount to The Dogger Bank, Limited, with your Call Notice.*

Yours faithfully,

A. SCRIBE,  
*Secretary.*

To.....

.....

A. B. C. COMPANY, LIMITED.  

---

SIR OR MADAM,

## FORFEITURE OF SHARES.

With reference to my application of the ..... last, I am instructed to inform you that, in consequence of non-payment of the amount of £ : : due on the ..... Shares allotted to you in this Company, my Directors forfeited the said Shares at their Meeting on the ..... last.

I am further instructed to inform you that, although the Shares have been forfeited, you are, under the Company's Articles of Association, still liable to pay the amount due, together with Interest at the rate of 10 per cent. per annum and all expenses which have been incurred by the Company in connection with the matter.

Yours obediently,

A. SCRIBE,

*Secretary.*M.....  

---

The book entries to record the transaction are as follows :—

- (1) By means of a Journal entry *Debit* Share Capital Account and *Credit* Forfeited Shares Account, with the amount *called up* on the shares, for as the issued capital of the company is practically reduced for the time being, the credit balance on Share Capital Account must likewise be reduced by such amount.
- (2) The Sundry Persons for Calls Account shows a debit balance for calls in arrear—this being the *raison d'être* for forfeiture—so a Journal entry is made *crediting* this account and *debiting* Forfeited Shares Account with such calls in arrear.

- (3) The balance of the Forfeited Shares Account, then, represents the amount paid on the shares before forfeiture.
- (4) Until the shares are re-issued the balance on Forfeited Shares Account must be shown as a separate item among the liabilities on the Balance Sheet.

The company has power to re-issue the shares, and, in fixing the price, can give credit for any sum received from the previous holder; that is to say, the shares can be re-issued at a discount not exceeding the amount already received, so that the purchase price, together with the amount paid by the defaulting shareholder, amounts to the calls made on the shares in question.

If the price obtained exceeds the amount of calls in arrear, the balance standing to the credit of the Forfeited Shares Account should be transferred to Reserve Fund, although, unless the articles provide to the contrary, the balance could be credited to Revenue Account, in the same way as premiums on shares.

As regards the Share Ledgers, the shares forfeited should be transferred, through the medium of the Register of Transfers, to a Forfeited Shares Account, a record being made in the account of the late holder of the reason for forfeiture, date, and when the various notices sent to the defaulting shareholder were posted.



## CHAPTER XIV.

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**Final Accounts and Audit.**

The articles of association usually prescribe that the books of account shall be kept at the registered offices of the company, and set forth the restrictions as to the time and manner of inspection by members.

The Act does not require the preparation or the submission of any Balance Sheet or Revenue Account, although Section 113, Subsections 2 and 3 provide that :

(1) The Balance Sheet shall be signed on behalf of the Board by two of the directors of the company, or, if there is only one director, by that director, and the auditors' report shall be attached to the Balance Sheet, or there shall be inserted at the foot of the Balance Sheet a reference to the report, and the report shall be read before the company in general meeting, and shall be open to inspection by any member.

Any shareholder shall be entitled to be furnished with a copy of the Balance Sheet and auditors' report, at a charge not exceeding sixpence for every hundred words.

(2) If any copy of a Balance Sheet which has not been signed as required, is issued, circulated, or published, or if any copy of a Balance Sheet is issued, circulated, or published, without having a copy of the auditors' report attached thereto, or containing such reference to

that report as is required, the company, and every director, manager, secretary, or other officer of the company who is knowingly a party to the default, shall, on conviction, be liable to a fine not exceeding £50.

A statement in the form of a Balance Sheet certified by the auditors has also to be filed with the Annual Summary (*vide* p. 137).

By Section 114 holders of preference shares and debentures have the same right to receive and inspect the Balance Sheets of the company and the reports of the auditors and other reports as is possessed by the holders of ordinary shares in the company.

The articles usually provide that a printed copy of the Balance Sheet shall be issued prior to the annual general meeting, but it is unusual for a Trading Account to be published, as otherwise trade competitors would obtain information which might adversely prejudice the interests of the company. A provision in the articles that the directors may form an internal Reserve Fund that need not be shown in the Balance Sheet or directors' report, and, although disclosed to the auditors, not referred to by them in their report, was held, in the case of *Newton v. Birmingham Small Arms Company* (1906, 2 Ch. 378), to be *ultra vires*.

Section 82 of the Larceny Act makes it a misdemeanour for any director, manager, or other officer of the company, with intent to defraud, to omit to make, or to cause or direct to be made, a full and true entry of the transactions of the company in its books or accounts, and

Sections 83 and 84 further deal with the destruction or mutilation of such books, or the publication of false statements with the intent to deceive.

Section 216 of the Companies (Consolidation) Act corresponds very closely with Sections 82 to 84 of the Larceny Act, 1861; whilst Section 281 provides that if any person in any return, report, certificate, balance sheet, or other document required by or for the purposes of any of the provisions of the Act specified in the Fifth Schedule thereto, wilfully makes a statement false in any material particular, knowing it to be false, he shall be guilty of misdemeanour, and shall be liable on conviction to imprisonment for a term not exceeding two years, with or without hard labour, and on summary conviction to imprisonment for a term not exceeding four months, with or without hard labour, and in either case to a fine in lieu of or in addition to such imprisonment.

As regards the auditors, Section 112 provides that every company shall at each annual meeting appoint an auditor or auditors, to hold office until the next annual general meeting, and that in default of any appointment being made the Board of Trade may, on the application of a member, appoint an auditor and fix his remuneration.

A director or officer of the company is not eligible to act as auditor. By Subsection 4, a retiring auditor cannot be removed from office and another person appointed in his place unless notice of an intention to propose such other person for the office has been given to the company not less than fourteen days before the annual meeting.

The company must send a copy of such notice to the retiring auditor, and give notice thereof to the shareholders, not less than seven days before the annual general meeting.

The auditor has a right of access at all times to the books, accounts, and vouchers of the company, and is entitled to require from the directors and officers such information and explanations as may be necessary for the performance of his duties.

It is incumbent upon him to place before the shareholders the necessary information as to the true financial position of the company, and he does not discharge this duty by merely indicating the means whereby such information may be obtained.

He must not certify what he does not believe to be true, and must take reasonable care and skill—what amounts to reasonable care depending on the circumstances of each particular case.

An auditor is an officer of the company, and is liable to misfeasance proceedings under Section 215 of the Act.

By Section 109 power is given to the Board of Trade to appoint inspectors to investigate the affairs of the company, on the application of members holding not less than one-tenth of the shares issued. The company itself, by special resolution, may also appoint inspectors to investigate its affairs.

CHAPTER XV.

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**Companies Established Outside the United Kingdom.**

Every company incorporated outside the United Kingdom which establishes a place of business within the United Kingdom must within one month file with the Registrar of Joint Stock Companies—

- (a) A certified copy of the charter, statutes, or memorandum and articles of the company, or other instrument constituting or defining the constitution of the company, and if the instrument is not written in the English language, a certified translation thereof.
- (b) A list of the directors of the company.
- (c) The name and address of some person resident in the United Kingdom authorised to accept notices and service of process.

Any alteration in the list of directors or persons authorised to accept service must be notified to the Registrar within one month.

Each year a statement in the form of a Balance Sheet must also be filed.

If such company use the word "limited" as part of its name it must—

- (1) In every prospectus inviting subscription for shares or debentures in the United Kingdom state the country in which it is incorporated.
- (2) Conspicuously exhibit its name on every place where it carries on business and the country in which incorporated.
- (3) Have its name and country of incorporation printed on all notices, bill heads, &c.

The expression "place of business" includes a share transfer office.

Stamp duty is payable on the issue of capital by such foreign companies in the United Kingdom.

It should be noted that, following the decision of the House of Lords in *De Beers Consolidated Mines, Lim. v. Howe* (1906, App. Ca. 455), a company is liable for income-tax on the whole of its profits, even if registered abroad, with its head office abroad, *if the real control of the company is exercised in this country*, it being deemed to be resident here. It may, however, have a transfer registration office and issue its shares in this country without incurring any liability for tax other than on dividends paid to members resident in this country, provided it is actually managed abroad and meetings of directors not held in England.

CHAPTER XVI.

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**Rules of the Committee of the London Stock Exchange relating to Special Settlements and Quotations.**

The requirements of the Committee of the London Stock Exchange relating to Special Settlements and Quotations are contained in "The Rules and Regulations of the Stock Exchange." (Price 1/-)

**SPECIAL SETTLEMENTS.**

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The following documents and particulars should be sent to the Secretary of the Share and Loan Department, when application is made for a Special Settlement :—

(Rules 149 and 150.)

**A               SCRIP OR BONDS OF NEW LOANS.**

A Specimen of the Scrip or Bond.

A Copy of the prospectus, circular or advertisement relating to the issue.

A Statutory Declaration stating :

1. The amount allotted
  - (a) to the public,
  - (b) to others.
2. The distinctive numbers and denomination of each Class of Scrip or Bond.
3. The amount paid up thereon.
4. That the Scrip or Bonds are ready to be delivered.

**B**

## SHARES OF NEW COMPANIES.

The Certificate of Incorporation.

A Specimen of the Share Certificate.

A Copy of the Prospectus, the Statement in lieu of Prospectus as filed with the Registrar of Joint Stock Companies, Circular, or Advertisement relating to the issue.

A specimen call letter.

Certified printed Copies of Contracts relating to the issue of Shares credited as fully or partly paid.

A letter from the Secretary of the Company, stating:

1. That the Share Certificates are ready to be issued.
2. The distinctive numbers of the shares allotted
  - (a) to the public,
  - (b) to the vendors.
3. The particulars of the Company's Capital.
4. The nominal amount of each share, and the amount paid in cash or credited as paid on each share.
5. In cases where the whole of the Capital has not been issued at the time the application is made, whether the unissued shares are Vendors' Shares or are held in reserve for future issue.

**C**

## STOCK OR DEBENTURE STOCK OF NEW COMPANIES.

A Specimen of the Scrip or Stock Certificate.

A Copy of the Prospectus, the Statement in lieu of Prospectus as filed with the Registrar of Joint Stock Companies, Circular, or Advertisement relating to the issue.

A letter from the Secretary of the Company, stating:

1. The amount allotted
  - (a) to the public,
  - (b) to others.
2. The amount paid in cash per £100 Stock.
3. That the Scrip or Stock is ready to be issued.



OFFICIAL QUOTATIONS.

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A CONDITIONS PRECEDENT TO AN APPLICATION FOR  
OFFICIAL QUOTATION.  
(Rules 151 and 152.)

1. That the Prospectus—

Shall have been publicly advertised ;

Agrees substantially with the Act of Parliament or  
Articles of Association ;

Provides for the issue of not less than one-half of the  
Authorised Capital and for the payment of 10 per  
cent. upon the amount subscribed ;

If offering Debentures or Debenture Stock states fully  
the terms of redemption.

In cases where a Company has sold an issue of Deben-  
tures or Debenture Stock which is subsequently  
offered for public subscription either by the  
Company or any subsequent purchaser, states the  
authority for the issue and all conditions of sale.

2. That two-thirds of the amount proposed to be issued of  
any class of Shares or Securities, whether such issue  
be the whole or a part of the authorised amount, shall  
have been applied for by and unconditionally allotted  
to the public, Shares or Securities granted in lieu of  
money payments not being considered to form a part  
of such public allotment.

3. That the Articles of Association, and the Trust Deed  
where such is required, contain the provisions specified  
hereafter.

4. That the Certificate or Bond is in the form approved.

**B**

## ARTICLES OF ASSOCIATION.

Articles of Association should contain the following provisions :—

1. That none of the funds of the Company shall be employed in the purchase of, or in loans upon the security of its own Shares;
2. That Directors must hold a share qualification;
3. That the borrowing powers of the Board are limited;
4. That the non-forfeiture of dividends is secured;
5. That the common form of transfer shall be used;
6. That all Share and Stock Certificates shall be issued under the Common Seal of the Company, and shall bear the signatures of one or more Directors and the Secretary;
7. That fully-paid Shares shall be free from all lien;
8. That the interest of a Director in any contract shall be disclosed before execution, and that such Director shall not vote in respect thereof;
9. That the Directors shall have power at any time and from time to time to appoint any other qualified person as a Director either to fill a casual vacancy or as an addition to the Board, but so that the total number of Directors shall not at any time exceed the maximum number fixed; but that any Director so appointed shall hold office only until the next following Ordinary General Meeting of the Company, and shall then be eligible for re-election;
10. That a printed copy of the Report, accompanied by the Balance Sheet and Statement of Accounts, shall, at least seven days previous to the General Meeting, be delivered or sent by post to the registered address of every member, and that two copies of each of these documents shall at the same time be forwarded to the Secretary of the Share and Loan Department, The Stock Exchange, London;

11. That the charge for a new Share Certificate issued to replace one that has been worn out, lost, or destroyed shall not exceed one shilling.

**C****TRUST DEEDS.**

Trust Deeds should contain the following provisions :—

1. Where provision is made that the security shall be repayable at a premium, either at a fixed date or at any time upon notice having been given, the Trust Deed must further provide that should the Company go into voluntary liquidation for the purpose of amalgamation or reconstruction the security shall not be repayable at a lower price.
2. The following clause should be inserted in all Deeds :—

“ The statutory power of appointing new Trustees hereof shall be vested in the Company, but a Trustee so appointed must in the first place be approved of by a Resolution of the Debenture (or Debenture Stock) holders passed in the manner specified in the Schedule hereto. A Corporation or Company may be appointed a Trustee of these presents.”
3. In the clause regulating the convening of meetings of the Debenture (or Debenture Stock) holders, the following words should be inserted, “ and the Trustee or Trustees shall do so upon a requisition in writing signed by holders of at least one-tenth of the nominal amount of Debentures (or Debenture Stock) for the time being outstanding.”
4. The clause defining an “ Extraordinary Resolution ” must provide that “ the expression ‘ Extraordinary Resolution ’ means a resolution passed at a meeting of the Debenture (or Debenture Stock) holders duly convened and held at which a clear majority in value of the whole of the Debenture (or Debenture Stock) holders is present in person or by proxy and carried by a majority consisting of not less than

“ three-fourths of the persons voting thereat upon a  
“ show of hands, and if a poll is demanded then by a  
“ majority consisting of not less than three-fourths in  
“ value of the votes given on such poll.”

5. Should Debentures or Debenture Stock be entitled  
“ First Mortgage,” provision must be made for the  
creation of a specific first mortgage in favour of the  
Debenture or Debenture Stock holders.

## D

### SHARE AND STOCK CERTIFICATES.

All Certificates should state on their face the authority under which the Company is constituted and the amount of the authorised Capital of the Company.

All Certificates should bear a foot-note to the effect that no Transfer of any portion of the holding can be registered without the production of the Certificate.

Where the Capital of a Company consists of more than one class of Shares of the same denomination, the distinctive numbers of the Shares of each class must be printed on the face of the Share Certificates.

All Preference Share Certificates should bear on their face a statement of the Company's Capital and the conditions, both as to capital and dividends, under which the Shares are issued.

Debentures and Debenture Stock Certificates should, in addition to legal requirements, state on their face the authority under which the Company is constituted, the nominal Capital of the Company, the dates when the interest on the Debentures or Debenture Stock is payable, and the authority under which the issue is made (*i.e.*, Articles of Association and resolutions); and on their back the conditions of issue, redemption, and transfer.

## E

### BONDS.

Bonds must specify the amount and conditions of the loan, the powers under which it has been contracted and the numbers and denominations of the Bonds issued, and in the case of a loan issued either wholly or partly in London, those issued in London must bear the autographic signature of the London Agents or Contractors.

**F** NEW COMPANIES.

Before the application form can be issued for signature there must be supplied :—

A Copy of the Prospectus.

Two Copies of the Articles of Association.

In the case of Debentures or Debenture Stock the Trust Deed [where possible before execution].

**G** After the application form has been signed there must also be supplied in the case of :—

## SHARES.

The Certificate of Incorporation, and the Certificate that the Company is entitled to commence business.

Two certified copies of the Prospectus, endorsed with the date when first advertised.

Two certified copies of the Memorandum and Articles of Association.

The original Letters of Application.

The Allotment Book containing a List of Applicants, the number applied for by each and the result of each Application, with a Summary signed by the Chairman and Secretary.

Should the allotment have taken place at an interval of six months or more before the date of the application, a certified list of present shareholders will also be required.

A copy of the Letter of Allotment and the date when posted.

A Specimen of the Share Certificates.

The Bankers' Pass Book, accompanied by a Certificate on a special Form from the Company's Bankers, stating the amount of Deposits received by them, and the number of Shares on which such Deposits (*i.e.*, application money only, being £ per share) were paid.

Authenticated copies of all Concessions and similar documents, with notarially certified printed translations, and certified printed copies of all Contracts and Agreements.

A Statutory Declaration by the Chairman and Secretary, stating the following particulars:—

1. That the Prospectus complies with the provisions of the Companies (Consolidation) Act, 1908.
2. That all documents required by the Companies (Consolidation) Act, 1908, have been duly filed with the Registrar of Joint Stock Companies, and the dates of filing.
3. The number of Shares applied for by the public.
4. The number of Shares allotted unconditionally to the public (Nos.            to            ), and the amount per Share paid thereon in cash.
5. The number of Shares allotted for a consideration other than cash (being Nos.            to            ).
6. The amount of deposits paid, and that such deposits are absolutely free from any lien.
7. That the Share Certificates are ready for delivery, that the purchase of the properties has been completed, and the purchase-money paid, and that no impediment exists to the settlement of the Account.
8. The total number of Allottees and the largest number of Shares (a) applied for by and (b) allotted to any one applicant.

**H** After the application form has been signed there must be supplied in the case of:—

#### DEBENTURES AND DEBENTURE STOCK.

The Certificate of Incorporation, or Act of Parliament, and the Certificate that the Company is entitled to commence business.

A Certified printed copy of the Mortgage Deed or other similar document, and the Official Certificate of the Registration of the Mortgage or Charge.

Certified copies of the Articles of Association, Resolutions, or other authority for the present issue.

Two Certified copies of the Prospectus.

The original Letters of Application.

The Allotment Book containing a list of applicants, the amount applied for by each, and the result of each application, with a summary of the whole, signed by the Chairman and Secretary.

Should the allotment have taken place at an interval of six months or more before the date of the application, a Certified List of present Stockholders will also be required.

A copy of the Allotment Letter, and the date when posted.

A Specimen of the Debentures or Debenture Stock Certificate, and of the Scrip where Scrip is issued; Certificates of Debenture Stock allotted to vendors in lieu of money payments being enfaced "Issued to Vendors."

A copy of the last published Report and Accounts.

The Bankers' Pass Book, accompanied by a Certificate, on a special form, from the Company's Bankers, stating the amount of Deposits received by them and the amount of Debentures or Debenture Stock on which such deposits (*i.e.*, application money only, being £        per Debenture) were paid.

A Statutory Declaration by the Chairman and Secretary stating:—

1. That the prospectus complies with the provisions of the Companies (Consolidation) Act, 1908, and that all documents required by that Act have been duly filed with the Registrar of Joint Stock Companies and the dates of filing.
2. The amount of Stock applied for by the public.
3. The amount unconditionally allotted to the public  
(Nos.        to        ).
4. The amount, viz.: £        %, paid thereon in cash.
5. The amount allotted for a consideration other than cash  
(Nos.        to        ).
6. The total amount of Deposits, and that such deposits are absolutely free from any lien.

7. That the Debentures or Debenture Stock Certificates are ready for delivery, and that there is no impediment to the settlement of the Account.
8. That a Trust Deed has been executed and completed, if such be the case.
9. The effect of such Trust Deed, and the nature of the charge created thereby in favour of the Debenture-holders.
10. The total number of Allottees.
11. The largest amount of Debentures or Debenture Stock (a) applied for by, and (b) allotted to any one applicant.

A Statutory Declaration by the Chairman and Secretary, stating :—

1. The total amount of the Authorised Capital of the Company, and how constituted.
2. The number of Shares allotted unconditionally to the public (Nos.        to        ), and the amount paid on each Share in Cash.
3. The number of Shares taken by Concessionaires, Owners of Property, Contractors or other parties not included in the public allotment (being Nos.        to        ).
4. That the Share Certificates have been delivered; that the purchase of the properties has been completed and the purchase-money paid.

SCRIP.

**I** In addition to the requirements made in the case of definitive Stock or Bonds, a Specimen of the Scrip Certificate must be supplied.

**K** After the application form has been signed there must be supplied in the case of :—



## FURTHER ISSUES.

A King's printers' copy of the Act of Parliament authorising, the Resolutions, &c., creating, and the Circular or Prospectus offering, the new issue.

If Shares have been issued credited as fully or partly paid, certified printed copies of the Contracts relating thereto.

A Copy of the Allotment Letter.

A Copy of the last Report and Accounts.

A Specimen of the Share Certificate.

The Allotment Book unless the allotment is *pro rata*.

A Statutory Declaration by the Secretary stating:—

1. That the Prospectus or Circular complies with the provisions of the Companies (Consolidation) Act, 1908:
2. That all documents required by the Companies (Consolidation) Act, 1908, have been duly filed with the Registrar of Joint Stock Companies, and the dates of filing;
3. That the Shares (Nos.        to        ) have been applied for by and unconditionally allotted to the shareholders or the public or sold upon the market, as the case may be;
4. The amount per Share paid in cash;
5. The total number of Allottees, and the largest number of Shares applied for by and allotted to any one applicant;
6. That Certificates are ready to be issued and that there is no impediment to the settlement of the Account. It must also be stated whether or not the Shares are in all respects identical with those already quoted in the Official List.

The statement that Shares are in all respects identical means that:—

They are of the same nominal value, and that the same amount per Share has been called up.

They carry the same rights as to unrestricted transfer, attendance, and voting at meetings, and in all other respects.

They are entitled to dividend at the same rate and for the same period, so that at the next ensuing distribution the dividend payable on each Share will amount to exactly the same sum.

The statement that Stock is in all respects identical means that :—

All the Stock is entitled to the same rights as to unrestricted transfer, and in all other respects.

All the Stock is entitled to dividend at the same rate and for the same period, so that at the next ensuing distribution the dividend payable on each £100 of the Stock will amount to exactly the same sum.

**L** After the application form has been signed there must be supplied in the case of :—

#### VENDORS' SHARES.

A Certified List of the present holders of the Vendors' Shares.

A Certified Copy of the last published Report and Accounts of the Company.

A Specimen of the Share Certificate.

A Statutory Declaration by the Secretary stating :—

1. That the Vendors' Shares (Nos.     to     ) have all been issued and Certificates delivered;
2. That the Shares are in all respects identical with those already quoted in the Official List.

**M** After the application form has been signed there must be supplied in the case of :—

#### OLD COMPANIES.

The Certificate of Incorporation, or Act of Parliament, and the Certificate that the Company is entitled to commence business.

Authenticated copies of all Concessions and similar documents, with notarially certified printed translations.

Certified copies of all Prospectuses, original or otherwise, endorsed with the date when first advertised.

Two Certified copies of the Memorandum and Articles of Association.

A Specimen of the Share Certificate and of the Allotment Letter.

A Certified copy of present Register of Shareholders.

Certified printed copies of Contracts, Agreements, &c., together with copies of all Contracts relating to the issue of Shares credited as fully or partly paid.

A Certified copy of the Company's last published Report and Accounts.

A short history of the Company, setting forth its origin, progress, dividends, &c., the number of transfers registered during the last twelve months, and the number of Shares represented by such transfers.

Statutory Declaration by the Chairman and Secretary, stating the following particulars:—

1. That the Prospectus complied with the provisions of the Companies (Consolidation) Act, 1908.
2. That all documents required by the Companies (Consolidation) Act, 1908, have been duly filed with the Registrar of Joint Stock Companies, and the dates of filing.
3. The number of Shares applied for by the public.
4. The number of Shares allotted unconditionally to the public (Nos.        to        ), and the amount per Share paid thereon in cash.
5. The number of Shares allotted for a consideration other than cash (being Nos.        to        ).
6. That the Share Certificates have been delivered; that the purchase of the properties has been completed and the purchase-money paid.

N After the application form has been signed, there must be supplied in the case of :—

COLONIAL AND FOREIGN COMPANIES.

The Certificate of Incorporation, or Act of Parliament, or other similar document.

Two copies of the Statutes or Articles of Association or notarial translations of the same.

A Certified List of present Shareholders.

A Specimen of the Share Certificate.

Copies of all Agreements, Concessions, Deeds, &c., or notarially certified printed translations of the same.

A Certified copy of last published Report and Accounts, or translation of the same.

Official evidence of quotation in the country to which they belong, or where the issue has been made.

A short history of the establishment and progress of the Company from its incorporation to the present time, including particulars as to the issue of the Capital.

A Declaration stating :—

1. The number of Shares allotted;
2. The amount per Share paid in cash;
3. That the Shares are ready for delivery, and that no impediment exists to the settlement of the Account.

O After the application form has been signed, there must be supplied in the case of :—

RECONSTRUCTED COMPANIES.

The Certificate of Incorporation and the Certificate that the Company is entitled to commence business.

A statement of the plan of reconstruction, together with certified copies of all resolutions passed and Circulars issued in connection with the reconstruction.

The Allotment Book, with a Summary signed by the Chairman and Secretary.

The Allotment Letter, and the date when posted.

A Specimen of the Share Certificate.

Two Certified copies of the Memorandum and Articles of Association.

Certified printed Copies of all Contracts, Agreements, &c.

Copies of all Contracts relating to the issue of fully or partly paid Shares.

A Statutory Declaration by the Chairman and Secretary, stating:—

1. That all Documents required by the Companies (Consolidation) Act, 1908, have been duly filed with the Registrar of Joint Stock Companies and dates of filing.
2. The Authorised Capital of the Company.
3. The number of Shares to which Shareholders in the old Company were entitled; the number and distinctive numbers of Shares unconditionally allotted to such Shareholders; and the amount per Share (a) paid thereon in cash, and (b) credited as paid up.
4. The number and distinctive numbers of Shares applied for by and allotted unconditionally to the public, and the amount per Share (a) credited as paid up, and (b) paid thereon in cash.
5. That the Share Certificates have been or are ready to be delivered, and that there is no impediment to the settlement of the Account.

**P** After the application form has been signed the following documents must be supplied in the case of:—

#### LOANS.

Details of the creation of the Loan, and the authority under which it is issued, including authenticated copies of concessions, &c., with notarially certified translations.

172 THE PROMOTION AND ACCOUNTS OF A  
PUBLIC LIMITED COMPANY.

The Authority of the Agents or Contractors to receive subscriptions.

A Certified Copy of the Prospectus.

Evidence that all Bonds issued and payable abroad bear the signature of some properly authorised person.

A Specimen Bond, together with a Bond duly executed, or Scrip Certificate if issued.

Statutory Declaration by the Agents, stating:—

1. The amount allotted unconditionally to the public.
2. That the required amount, viz., £     per cent., has been paid thereon in cash.
3. That the Bonds are ready for delivery, and that there is no impediment to the settlement of the Account.
4. The numbers and denominations of those Bonds which bear the autographic signature of the London Agents or Contractors.

Q After the application form has been signed the following documents must be supplied in the case of :—

BONDS QUOTED ABROAD.

Official evidence of quotation in the country to which they belong or where the issue has been made.

Notarially certified printed translations of all Prospectuses, and of the Laws creating and authorising the Loan.

A Specimen Bond, together with a Bond duly executed.

An Official Certificate setting forth:—

1. The authorised and issued amounts of the Loan, and the terms of issue.
2. The distinctive numbers and denominations of the Bonds.
3. Evidence that all Bonds bear the signature of some properly authorised person.

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